

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION Nos. 2668 OF 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed by the petitioners/plaintiffs assailing the orders dated 09.06.2015 of the learned Principal Junior Civil Judge, Amalapuram passed in I.A.No.136 of 2015 in O.S.No.353 of 2008 filed by the plaintiffs under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to permit the plaintiffs to amend the plaint by adding paragraphs IV(A), VI (A), VIII(AA) as stated in the petition list.

2. I have heard the submissions of the learned counsel for the petitioners/plaintiffs ("plaintiffs", for brevity) and the learned counsel for the respondents/defendants ("defendants", for brevity). I have perused the material record.

3. The case of the plaintiffs in support of their request for amendment of the plaint, in brief, is as follows:

The suit is filed for grant of perpetual injunction against the defendants and their men etc., from interfering with the plaintiffs' peaceful possession and enjoyment of three items of property including the house site of an extent of Ac.0-05 cents situated within Komaragiripatnam Panchayat. The said house site property is in the peaceful possession and enjoyment of the 1st plaintiff and his predecessors since times immemorial. In recognition of the possession of the 1st plaintiff, the revenue authorities issued a patta in his favour on 31.12.1975. Item no.2 of the plaint schedule

property is also a house site of an extent of Ac.0-03 cents and it is situated adjacent to item no.1, stated above. It is also in peaceful possession and enjoyment of the 3rd plaintiff. And in recognition of the possession of the 3rd plaintiff over the said property, the revenue authorities gave possession certificate in his favour on 05.01.1999. Item no.3 of the plaint schedule property was originally in possession of one L.Venkamma, who is the mother of the 2nd plaintiff. It is situated adjacent to item no.2 stated above and is of an extent of Ac.0-04 cents. The said Venkamma was given patta by the revenue authorities in respect of the said item of property on 31.12.1975. On her death, the said item no.3 devolved upon the 2nd plaintiff and the second plaintiff is in possession and enjoyment of the same. When there was a threat of dispossession from the properties, the plaintiffs got filed the instant suit for perpetual injunction. Temporary injunction was granted in favour of the plaintiffs and an Advocate Commissioner was also appointed to note down the physical features of the properties. Subsequent to the filing of the suit and after grant of interim injunction in favour of the plaintiffs, the defendants 1 and 2, with the active support of rowdy elements in the village, had high handedly trespassed into part of item No.1 of the plaint schedule property i.e., to an extent of Ac.0-02½ cents on the Eastern side and raised a thatched shed thereon. The defendants had thus trespassed into the said extent of the land of the 1st plaintiff and raised the said construction having occupied the said land without any manner of right. Unless the defendants and their men are evicted from the said encroached extent by directing them to remove the illegal constructions, the 1st plaintiff would be put to serious and irreparable loss. Hence, she is advised to seek

amendment of the plaint to plead necessary averments in the plaint and seek a decree in her favour against defendants 1 and 2 for recovery of the possession of the said extent of land after ejecting defendants 1 and 2 and their men there from and for mesne profits. There are no wilful laches on the part of the plaintiffs in not filing the petition earlier.

4. The case of the defendants in the counter filed by the first defendant, in brief, is as follows:

The material allegations in the affidavit filed in support of the petition are false. The claims of enjoyment and possession over the respective lands by the respective plaintiffs as stated in the affidavit of the first plaintiff are false. The further allegations that these defendants had threatened to forcefully dispossess the plaintiffs from their properties is also false. The further allegations that after the suit is instituted and that after the interim relief is granted, the defendants 1 and 2 had highhandedly and illegally encroached into the alleged portion of the first item of the suit property and raised a thatched hut and that therefore, the said acts necessitated the plaintiffs to seek amendment of the plaint and claim the reliefs of recovery of possession and mesne profits are all false. These defendants have been in possession and enjoyment of the property in an extent of Ac.0-03 cents in Komarigiripatnam village for the last 40 years. The 2nd defendant has been in possession and enjoyment of the said extent of land. He has constructed a thatched house. And he is paying taxes in respect of H.No.1-150, constructed in the said house site. In the cyclone, the said house was damaged. In the place of the existing house, the defendants had erected a house with cement poles and thatched Palmyra and coconut leaves. The possession certificate

was issued in favour of the 1st defendant on 06.01.1999 by the revenue authorities. The defendants are in possession of the lands for the last over 40 years. The plaintiffs are no way concerned with the said land. The *ex parte* injunction orders granted earlier were not extended and the petition was closed. The petition is intended to drag on the matter and to avoid adducing evidence as the plaintiffs' case is not genuine. When the trial Court insisted for commencement of trial, the plaintiffs having taken a number of adjournments had eventually filed the petition.

5. At the hearing before the trial Court, no documents were exhibited by either side.

6. On merits and by the order impugned in this revision, the trial Court had dismissed the petition of the plaintiffs *inter alia* holding that the petition is filed seven years after the institution of the suit and that too after the issues were framed and when the suit is coming for trial and that the plaintiffs having taken adjournments for two long years had eventually filed this petition and that therefore there are no *bona fides* on the part of the plaintiffs in filing the present petition and that the petition is filed only to drag on the proceedings and that the amendment if permitted would change the nature of the suit.

7. The learned counsel for the plaintiffs while reiterating the case pleaded by the plaintiffs would contend as follows:

The trial Court ought to have seen that only because the defendants have trespassed illegally and highhandedly into the part of item no.1 of the plaint schedule property during the pendency of the suit and that too during the subsistence of an

order of injunction, the plaintiffs are constrained to seek amendment of the plaint and that the seeking of the amendment of the plaint was thus necessitated only because of the conduct of the defendants, which is high handed. The trial Court ought to have seen that for several months there was boycott of Courts by the Advocates and that prior to that, the post of the Presiding Officer of the Court was vacant as no officer was posted to preside over the Court, and that therefore, the petition for amendment could not be filed earlier. The trial Court ought to have seen that though issues are framed, the trial of the suit has not yet commenced. The observations of the Court below that there are no *bona fides* on the part of the plaintiffs and that the petition is filed belatedly about two years after the suit was posted for trial, are unwarranted in the circumstances stated and as the plaintiffs were forced to file the amendment petition on account of the conduct of the defendants. The trial Court ought to have seen that the amendment is necessary to avoid multiplicity of suits and for setting at rest, the dispute between the parties once and for all. Since the dominant purpose of the rule is to minimize the litigation and to enable the parties to have all the disputes resolved in one suit, the trial Court ought to have allowed the amendment sought for by the plaintiffs. The trial Court ought to have seen that the relief of recovery of possession, which is being sought for by way of amendment, does not change the nature of the suit as the change of nature of relief shall not be considered as change of the nature of the suit. The trial Court ought to have seen that merely on the ground of delay an amendment of the plaint cannot be refused when the facts of the case warrant granting of such relief otherwise.

8. Per contra, the learned counsel for the respondents/defendants, while reiterating their case and while supporting the orders of the Court below, would contend that in view of the bar contained in the proviso appended to Order VI Rule 17 of the Code and in the absence of any sufficient ground for tolerating the delay in filing the application and the failure of the plaintiffs to show that in spite of due diligence they could not have raised the matter earlier, the amendment should not be permitted.

He would further submit that the trial Court had rightly dismissed the application which is belatedly filed without showing the sufficient cause. He would specifically point out that the plaintiffs' pleadings are conspicuously silent as to when the alleged trespass was made by the defendants into item no.1 of the plaint schedule property.

9. I have bestowed my attention to the facts and I have given earnest consideration to the submissions.

10. In view of the contentions and rival contentions, it is necessary to refer to the proviso to Order VI Rule 17 of the Code, which reads as under:

“Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

10.1 It is profitable to refer to the legal position obtaining.

In **J. Samuel and others v. Gattu Mahesh and others**^[1]

the Supreme Court while dealing with an application for amendment had held as follows:

“In the given facts, there is a clear lack of “due diligence” and the mistake committed certainly

does not come within the preview of a typographical error. The term “typographical error” is defined as a mistake made in the printed/typed material during a printing/typing process. The term includes errors due to mechanical failure or slips of the hand or finger, but usually excludes errors of ignorance. Therefore, the act of neglecting to perform an action which one has an obligation to do cannot be called as a typographical error. As a consequence the plea of typographical error cannot be entertained in this regard since the situation is of lack of due diligence wherein such amendment is impliedly barred under the Code.”

In **Rajkumar Gurawara (dead) through L.Rs v. S.Sarwagi and Company Private Limited and Another**^[2] the Supreme Court having referred to Order VI Rule 17 of the Code had held as follows:

“Further, it is relevant to point out that in the original suit, the plaintiff prayed for declaration of his exclusive right to do mining operations and to use and sell the suit schedule property and in the petition filed during the course of the arguments, he prayed for recovery of possession and damages from the second defendant. It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats the law of limitation.”

In the decision in **VIDYABAI vs. PADMALATHA**^[3] the Supreme Court observed that proviso to Order VI Rule 17 of the Code is couched in a mandatory form and, therefore, the Court’s jurisdiction to allow an application for amendment is taken away there under unless the conditions precedent therefor are satisfied,

and that before allowing amendment, the Court must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial and that it is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties and only if such a condition is fulfilled, the amendment is to be allowed. Thus, the proviso appended to Order VI Rule 17 of the Code was held to restrict the power of the Court and that it placed an embargo on exercise of its jurisdiction and that unless the jurisdictional fact as envisaged therein is found to exist, the Court would have no jurisdiction at all to allow the amendment.

In **REVAJEETU BUILDERS V/s NARAYANA SWAMY**^[4], on an analysis of English and Indian case law, the Supreme Court carved out the following principles which should weigh with the Court while dealing with an application for amendment:

- (1) **Whether the amendment sought is imperative for proper and effective adjudication of the case;**
- (2) **Whether the application for amendment is *bona fide* or *mala fide*;**
- (3) **The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;**
- (4) **Refusing amendment would in fact lead to injustice or lead to multiple litigation;**
- (5) **Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and**
- (6) **As a general rule, the Court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.**

The Supreme Court, however, clarified that the above principles were illustrative and not exhaustive.

In **CHANDER KANTA BANSAL V/s. RAJINDER**

SINGH^[5], the Supreme Court, taking note of the fact that 'due diligence' has not been defined in the Code, referred to the dictionary meaning of 'diligence' which is to the effect that it means careful and persistent application or effort or a continual effort to accomplish something; care; caution; the attention and care required from a person in a given situation, and observed that 'due diligence' means the diligence reasonably expected from and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. Reference was also made to 'Words and Phrases' by Drain-Dyspnea (Permanent Edition 13-A) wherein 'due diligence' was defined in law to mean doing everything reasonable and not everything possible. The Hon'ble Supreme Court, therefore, concluded that 'due diligence' would mean reasonable diligence and would mean such diligence as a prudent man would exercise in the conduct of his own affairs. Further, in the decision in **Abdul Rehman and Another v. Mohd.**

Ruldu and Others^[6], the Supreme Court, having taken note of the above provision of law had laid down that it is clear that the parties to the suit are permitted to bring forward amendment of the pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them and that the Courts have to be liberal in accepting the same, if such application for amendment is made prior to the commencement of the trial and that if such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that, inspite of due diligence, the party could not have raised the matter before the commencement of the trial. In the above decision the Supreme Court reiterated the following

proposition:

“All amendments which are necessary for the purpose of determining real questions of controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.”

In the above decision the Hon'ble Supreme Court further referred to the ratio in the decision in **Pankaja and another v.**

Yellapa^[7], which runs as follows:

“If the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed.”

In **Pankaja and another** (7 supra) the facts are as under:

“As per the case of the plaintiffs, the defendant, in violation of the Court order, had further encroached into the suit property. Therefore, the plaintiffs sought for the amendment of the plaint for seeking the reliefs of declaration of ownership and possession of the said encroached area also. The said application was allowed by the trial Court. However, the Principal Civil Judge rejected the application for amendment on the ground that the application for amendment was filed at a belated stage. The High Court dismissed the revision on the said ground and also on the ground that the amendment introduces a different relief than what was originally asked for. The Supreme Court permitted the amendment by allowing the appeals.

In **Sampath Kumar v. Ayyakannu and another**^[8] the facts and ratio are as under: “A suit was brought in the year 1988 for

perpetual injunction in respect of an agricultural land. Before the commencement of the trial in the year 1999, the plaintiff moved the application for amendment of the plaint alleging that during the pendency of the suit, the defendant had forcibly disposed the plaintiff in the year 1989. On such averments the plaintiff sought for the relief of declaration of title to the suit property and consequential relief of recovery of possession. The defendant opposed the application of the plaintiff stating that he had perfected title to the property by adverse possession and that the suit is barred by law of limitation and that a valuable right that had accrued to the defendant is being sought to be taken away by proposed the amendment. The trial Court rejected the application for amendment observing that the appropriate course for the plaintiff was to bring a new suit. The High Court maintained the said order. The Supreme Court while allowing the appeal of the plaintiff had referred to its earlier decisions and had finally held as follows:

“8. *Rukhmabai v. Lala Laxminaraya and Ors.*: [1960]2SCR253, this Court has taken the view that where a suit was filed without seeking an appropriate relief, it is a well settled rule of practice not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if he seeks to do so.

9. Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are

allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amendment. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.

10. An amendment once incorporated relates back to the date of the suit. However, the doctrine of relation back in the context of amendment of pleadings is not one of universal application and in appropriate cases the Court is competent while permitting an amendment to direct that the amendment permitted by it shall not relate back to the date of the suit and to the extent permitted by it shall be deemed to have been brought before the Court on the date on which the application seeking the amendment was filed. (See observations in *Siddalingamma and Anr. v. Mamtha Shenoy*: AIR 2001 SC 2896).

11. In the present case the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has

already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.

11. Reverting to the instant case facts, what is to be noted is that the plaintiffs together brought the suit for perpetual injunction in respect of three items of the plaint schedule property. According to the plaintiffs, in spite of an injunction order, defendants 1 and 2 have high handedly and illegally trespassed into a portion of item no.1 of the plaint schedule property subsequent to the institution of the suit and that therefore, the plaintiffs are constrained to introduce the necessary averments in the plaint by way of amendment and seek the reliefs of recovery of possession and mesne profits and that therefore, the instant application is filed for amendment of the plaint only on account of the said subsequent event. Per contra, the defendants, while denying the case of the plaintiffs and while asserting that they are in possession over the disputed land for over 40 years, had asserted that originally there was a thatched house in the disputed property and that after it was damaged in a cyclone, they had erected a house with cement poles and thatched Palmyra and coconut leaves and that the averments in the proposed amendments are false and that when the suit is posted for trial, the plaintiffs having taken adjournments

had conveniently filed this petition only to drag on the matter as their case is not genuine.

12. Dealing first with the aspect that the application for amendment is not debarred in view of the *proviso* to Order VI Rule 17, it is necessary to refer to the decision in **Usha Devi v. Rijwan Ahamd**^[9]. In the said decision, a contention was advanced that the trial of the suit would commence with the settlement of the issues; and, in support of the said contention that the framing of issues marked the commencement of trial of the suit reliance was placed on the decision in **Ajendraprasadji N.Pandey v. Swami Keshavprakeshdasji** [(2006) 12 SCC1]. However, while meeting the said contention, the attention of the Supreme Court was invited to the decision of the Supreme Court in **Baldev Singh v. Manohar Singh** [(2006)6 SCC 498] wherein it was held as follows:

“Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and found that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion to the Court

to allow an amendment of the written statement at any stage of the proceedings.”

Further, the Supreme Court having referred to a three-judge Bench decision in **Sajjan Kumar v. Ram Kishan**^[10], had held as follows:

“Having heard the learned Counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial Court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial Court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 Code of Civil Procedure would not have been strictly applicable. It is true that the Plaintiff-Appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit.”

Thus in Usha Devi’s case, the Supreme Court, keeping in view of the decision in Sajjan Kumar (supra), held as follows:

“We may clarify here that in this order we do not venture to make any pronouncement on the larger issue as to the stage that would mark the commencement of trial of a suit but we simply find that the appeal in hand is closer on facts to the decision in Sajjan Kumar and following that decision the prayer for amendment in the present appeal should also be allowed.”

13. In the case on hand also, the trial has not concluded; and the evidence on the side of the plaintiffs is not yet closed. The matter has not reached the stage of arguments. Therefore, in the well considered view of this Court, the facts of present case are akin to the facts of the cases in Usha Devi (supra) and Sajjan Kumar (supra). This Court is of the considered view that it would be a sound exercise of discretion to permit amendment of the plaint and that on the ground of mere delay amendment cannot be refused. The amendment is being sought based on an event subsequent to the institution of the suit. Even assuming for a moment that the plaintiffs ought to have sought the amendment of the plaint much earlier and not belatedly, what is to be noted is that the proposed amendment is being sought on the basis of events, which had occasioned subsequent to the institution of the suit. Therefore, according to the plaintiffs, the defendants are responsible for the events by their conduct and that there is no default on the part of the plaintiffs. Therefore, in the well considered view of this Court, the contention that the *proviso* to Order VI Rule 17 of the Code debars the plaintiff from seeking the amendment is not well founded.

14. Dealing next with the aspect that if the amendment is permitted and if the suit is allowed to be converted from a suit for permanent injunction into one for recovery of possession and mesne profits, the nature of the suit would be changed, it is necessary to recall that in **Sampath Kumar's** case (supra) the facts show that a suit for perpetual injunction was originally brought and that before commencement of the trial, the plaintiff had moved an application for amendment of the plaint alleging that during the pendency of the suit the defendant has forcefully

dispossessed the plaintiffs in the year 1989 and that the defendant has opposed the said application for amendment of the plaint stating that he had perfected the title to the suit property by adverse possession and that if the amendment is permitted a valuable right that has accrued to the defendant would be taken away. Having regard to the above facts, the Supreme Court allowed the appeal of the plaintiff and permitted the plaintiff to amend the plaint. In fact, the relevant facts and the ratio in the above decision are already extracted supra while adverting to the legal position obtaining. Therefore, in view of the ratio in the said decision, the contention of the defendants does not deserve countenance. Further, as per the ratio in the decision of the Supreme Court, the change in the nature of relief claimed shall not be considered as a change in the nature of the suit and the power of amendment should be exercised in the larger interest of doing full and complete justice between the parties.

15. Coming to the contention that in the proposed amendment, the plaintiff did not plead the date of the alleged trespass. It is trite to note that the plaintiffs had specifically stated that the trespass was made after the institution of the suit and after the grant of interim relief in their favour. Further, as rightly pointed out by the learned counsel for the plaintiffs, the question as to whether the plaintiffs would be entitled to the reliefs that are being claimed by way of proposed amendments cannot be prejudged while considering an application, which is filed for seeking amendment of the plaint.

16. It is also pertinent to note that the plaintiffs are not precluded from bringing a fresh suit for recovery of the property on the basis of the subsequent cause of action. Even as per the

precedential guidance of the Supreme Court an amendment can be permitted if it is intended to determine the real question in controversy and that all amendments, which are necessary for the purpose of determining real questions of controversy between the parties, shall be allowed if such amendments sought for do not change the basic nature of the suit. As noted, a change in the nature of relief claimed shall not be considered as a change in the nature of the suit. The power of amendment should be exercised in the larger interests of doing full and complete justice between the parties and that all amendments, which are necessary for the purpose of determining the real question in controversy, should be allowed. Further, if the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed. The Court has also to consider whether the proposed amendment is intended to determine the real dispute between the parties. The law is well settled that all amendments ought to be allowed which satisfy the two conditions (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. If the amendment as proposed is allowed, no right accrued to the defendants would get defeated as the said defendants are from the beginning denying the possession of the plaintiffs and are contending that they are in possession of the property, which is being claimed by them as theirs since 40 years. Further, as the refusal of the request seeking amendment does not preclude the plaintiff from instituting a fresh suit, the refusal of the request leads to multiplicity of the litigation. In the well-considered view of this Court, if the amendment is permitted, the amendment which is based on events subsequent to the institution of the suit, though sought belatedly also helps in avoiding the multiplicity of

the proceedings and in setting at rest the dispute between the parties. Therefore, for all the aforesaid reasons, granting of amendment of the plaint really sub-serves the ultimate cause of justice and avoids further litigation and therefore, the amendment sought for by the plaintiff deserves to be allowed. Since the dominant purpose of the Rule is to minimize the litigation and to enable the parties to have all the issues relating to one dispute resolved in one suit, the amendment sought for by the plaintiffs can be allowed. In the well considered view of this Court it would be a sound exercise of discretion to permit the amendment being sought for in the pending suit in stead of dismissing on mere ground of delay. As per the precedential guidance, the well settled rule of practice is not to dismiss the suit automatically but to allow the plaintiffs to make necessary amendments if the plaintiffs seek to do so.

17. Having regard to the facts and reasons aforementioned, this Court is of the considered view that there is acceptable merit in the request of the plaintiffs and that the Court below is not justified in not permitting the plaintiffs to amend the plaint and that therefore the order impugned warrants interference.

18. Accordingly, the Civil Revision Petition is allowed and the impugned order is set aside. In the result, I.A.No.136 of 2015 in O.S.No.353 of 2008 on the file of the Principal Junior Civil Judge, Amalapuram is allowed. The trial Court shall now permit the plaintiffs to carry out the amendment of the plaint as prayed for.

On filing of the neat copy of plaint and payment of necessary Court fee, if any payable, the trial Court shall give the defendants an opportunity to file additional written statements to answer the averments in the amended plaint. There shall be no order as to

costs.

The miscellaneous applications pending, if any, in this revision shall stand closed.

JUSTICE M.SEETHARAMA MURTI

June 30, 2016

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[\[1\]](#) (2012) Supreme Court Cases 300

[\[2\]](#) (2008) 1 Supreme Court Cases 364

[\[3\]](#) (2009) 2 Supreme Court Cases 409

[\[4\]](#) (2009) 10 SCC 84

[\[5\]](#) (2008) 5 SCC 117

[\[6\]](#) 2013(1)ALD 1(SC)

[\[7\]](#) AIR 2004 SC 4102

[\[8\]](#) (2002) 7 SCC 559

[\[9\]](#) (2008) 3 Supreme Court Cases 717

[\[10\]](#) (2005) 13 SCC 89