

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION Nos. 5319 and 5355 of 2016

Date :19.12.2016

CRP 5319 of 2016

Between :

Mohammed Akhil Ahmed S/o Nooroddin
R/o Mulugu village and mandal
Warangal district

Petitioner

And

Porika Utham Kumar S/o Jagan Naik
Madanapally village, Mulugu mandal
Warangal district & another

Respondents

The Court made the following:



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COMMON ORDER:

Heard learned counsel for petitioner Sri Jithender Rao Veeramalla and learned counsel for respondents Sri Goverdhan Reddy. Parties are referred to as they are arrayed in the suit. Plaintiffs and defendants are same in the respective suits and interlocutory applications and claim made by them is also same. Hence, both the revisions are disposed of by common order.

2. Plaintiffs filed I A No. 216 of 2016 in O.S. No. 30 of 2016 and I A No. 217 of 2016 in O.S No. 31 of 2011 praying to permit them to amend the plaint for correction of registered sale deeds numbers mentioned in the respective plaints. The said applications were resisted by defendants. On consideration of the rival claims both applications are dismissed.

3. The trial Court held that the plaintiffs were aware of the documents mentioned in the plaints and have marked them, therefore it cannot be called as a mistake. Trial Court observed that plaintiffs were aware of the pleadings and negligently marked the documents. The trial Court observed that it amounts to filling up the gaps.

4.1 Learned counsel for petitioner submits that on the same day, plaintiffs and defendants executed two sale deeds simultaneously and the sale deeds bear the document registration Nos. 234 of 2011 and 235 of 2011. The suits are instituted on the same day praying to grant decree of permanent injunction against defendants and not to interfere

with peaceful possession and enjoyment of suit schedule property and they were numbered as O.S. No. 30 of 2011 and O.S. No. 31 of 2011.

4.2. O.S.No. 30 of 2011 was filed with reference to property covered by document No. 235 of 2011 whereas in the plaint erroneously it was mentioned as document No.234 of 2011. Similarly, O.S No. 31 of 2011 is filed with reference to property covered by document No. 234 of 2011, whereas in the plaint erroneously it was mentioned as document No.235 of 2011. Learned counsel further submits that while typing the plaints, erroneously document numbers are wrongly mentioned and it was purely a typographical mistake.

4.3. Learned counsel further submits that altering the document numbers, does not affect the defendants defense, since the plea in both the suits is same and parties are same in both the suits as well as in the documents relied upon in both the suits. In spite of due diligence, this mistake could not be noticed more particularly having regard to the fact that both documents were registered on the same day.

5.1 Sri Goverdhan Reddy, vehemently opposed the plea of the petitioners. He submits that it cannot be said as typographical mistake. With eyes wide open, plaintiffs have filed the suits and contested the suits. The evidence of the plaintiffs was recorded. Having marked the documents, knowing fully well for what purpose a document is sought to be marked. The suits were instituted in the year 2011 and it cannot be believed that for 5 years, the plaintiffs have not realized their mistake, more so, when the evidence was completed on their part and even on behalf of defendants, evidence of D.W. 1 was completed and on his behalf documents are already marked. When, the suit was coming up for further evidence, these applications are filed.

5.2. By placing reliance on the decision of the Supreme Court in **J.Samuel and Others Vs. Gattu Mahesh and others**¹ he submits that the present plea that it was a typographical mistake is not covered by the provision in order 6 Rule 17 CPC. In the facts of this case, it cannot be said that the plaintiffs have exercised due diligence, therefore, the trial Court has rightly dismissed the Interlocutory Applications. He would submit that the approach of the plaintiffs is only to protract the litigation and to harass the defendants.

6.1. Applications filed under Order 6 Rule 17 CPC have become the biggest clot in the disposal of civil cases. This was taken judicial notice by Supreme Court in **Revajeetu Builders and Developers Vs Narayanaswamy and Sons and others**².

6.2. Supreme Court delineated the principles for consideration of such applications. Paragraphs 63 and 64 read as under:

“FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the 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

¹ (2012)2 SCC 300

² (2009) 10 SCC 84

(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.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

64. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

6.3. The Supreme Court also emphasizes the need to impose costs. Paragraphs 61 and 62 read as under:

“COSTS:

61. The Courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs. The imposition of costs is an important judicial exercise particularly when the courts deal with the cases of amendment. The costs cannot and should not be imposed arbitrarily. In our view, the following parameters must be taken into consideration while imposing the costs. These factors are illustrative in nature and not exhaustive.

(i) At what stage the amendment was sought?

(ii) While imposing the costs, it should be taken into consideration whether the amendment has been sought at a pre-trial or post-trial stage;

(iii) The financial benefit derived by one party at the cost of other party should be properly calculated in terms of money and the costs be awarded accordingly.

(iv) The imposition of costs should not be symbolic but realistic;

(v) The delay and inconvenience caused to the opposite side must be clearly evaluated in terms of additional and extra court hearings compelling the opposite party to bear the extra costs.

(vi) In case of appeal to higher courts, the victim of amendment is compelled to bear considerable additional costs.

All these aspects must be carefully taken into consideration while awarding the costs.

62. The purpose of imposing costs is to:

- a) Discourage malafide amendments designed to delay the legal proceedings;
- b) Compensate the other party for the delay and the inconvenience caused;
- c) Compensate the other party for avoid- able expenses on the litigation which had to be incurred by opposite party for opposing the amendment; and
- d) To send a clear message that the parties have to be careful while drafting the original pleadings.

7.1.1. In **J. Samuel**, Supreme Court was considering the issue of prayer to amend pleadings in the plaint after the case was reserved for judgment on the plea that same was missed out due to typographical error. The trial Court rejected the said plea, whereas, High Court allowed the same. In the written statement filed by the defendants, they raised specific objection on maintainability of the suit and pointed out absence of mandatory requirements of Section 16 (c) of the Specific Relief Act and form 47 of the Appendix “A” of CPC.

7.1.2. The Supreme Court noted that unless the readiness is expressed by the party in terms of Section 16 (C) of the Specific Relief Act, the decree for specific performance cannot be granted. In spite of such specific objection raised on this issue at the earliest point of time and even though written arguments are filed, no steps were taken till the suit was reserved for judgment and only thereafter the application was filed. Court rejected the contention on behalf of the plaintiffs that it was a typographical mistake. It is seen that the decision turns on the facts of the case.

7.1.3. Supreme Court observed as under:

“14..... It is clear that in a suit for specific performance of a contract, unless there is a specific averment that he has performed or has always been ready and willing to perform the essential terms of the contract, the suit filed by

him is liable to be dismissed. In other words, in the absence of the abovesaid claim that he is always ready and willing to perform his part of the contract, the decree for specific performance cannot be granted by the court.”

“21. 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.”

7.2. In **Sajjan Kumar Vs. Ram Kishan**³, Supreme Court held,

“5. 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 CPC 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 execution in the event of the plaintiff-appellant succeeding in the suit.***”

7.3. In **Ragu Thilak D.John Vs S. Rayappan and others**⁴, the Supreme Court held that technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties.

³ (2005) 13 SCC 89

⁴ (2001) 2 Supreme Court Cases 472

7.4. In **Raparthu Pandu, Pattan Babu Khan Vs Thummala Seshi Reddy⁵ and P Durga Reddy Vs B.Yadi Reddy⁶**, this Court emphasized that while adopting liberal approach this Court is also required to see it does not cause grave prejudice or injustice to the other side and where it does not alter the cause of action or inconsistent to the existing material in the pleadings on record. It can be allowed where the amendment is necessary to explain the material on record.

8. Defective pleadings are generally curable, if the cause of action sought to be brought out was not abinitio completely absent [**Ganesh Trading Company Vs. Moji Ram-(1978) 2 SCC 91**]. Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting malafide or that by his blunder, he had caused injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side {**Jai Jai Ram Manohar Lal Vs. National Building Material Supply (1969) 1 SCC 869**}. While deciding prayers for amendment, Courts should not adopt hyper-technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties- Amendments are allowed in the pleadings to avoid uncalled

⁵ 2015 (2) ALT 697

⁶ 2015 (1) LS 201

for multiplicity of litigation. [**B.K.Narayana Pillai Vs Parameswaran Pillai (2000) 1 SCC 712**]

9. The basic facts are not in dispute. Plaintiffs and defendants entered into agreement of sale on same day. They were presented before the same Sub Registrar and documents were registered on the same day and bear successive numbers i.e., document No. 234 of 2011 and 235 of 2011 respectively. It is also not in dispute that suits are filed to grant permanent injunction and not to interfere with the peaceful possession and enjoyment of the respective properties covered by these two documents. The plaintiffs have instituted O.S. Nos. 30 and 31 of 2011 on the same day. Parties are same. What is sought to be corrected is the document number mentioned in the plaint in respect of O.S No. 30 of 2011 and to reflect the document No. 235 of 2011 instead of document No. 234 of 2011; and in O.S No. 31 of 2011 the correction sought is to reflect the document No. 234 of 2011 instead of document No. 235 of 2011. In the body of the plaint there is discussion about the registration of both documents and document numbers. In the facts of this case, it cannot be said that correction sought is not a clerical error and nor a bonafide mistake.

10. Having regard to the controversy in the suits, it cannot be said that by allowing the amendment of plaint the defense of defendants would adversely affect. It cannot be said the prayers for amendment are not bonafide. There is no change in the relief sought and the amendment does not introduce a new case. It only seeks to rectify the correct number of the document in issue. In matters of this nature liberal approach should be adopted by the Courts, within the four corners of long evolved principles delineated above. I am of the considered opinion that such amendment is necessary for effective adjudication.

11. However, as plaintiffs did not take due care while instituting the suit and the suit is of the year 2011, they shall have to be visited with exemplary costs, even while granting the relief to them. Due to their negligence also disposal of suit is delayed and defendants are subjected to hardship. Stark reality is the Courts are burdened with high pendency and there is need to streamline the litigation and reduce pendency. The litigants must also be disciplined. Avoidable delays must be viewed seriously. In the facts of this case, while granting relief to plaintiffs, they are burdened with costs of Rs. 10,000/- (Rupees ten thousand only) in each I.A. to be paid to defendants within two weeks from the date of receipt of copy of this order and a memo shall be filed as proof of such payment in the trial Court. Further no further evidence on behalf of plaintiffs would be permitted on this ground. It is needless to mention that in default of payment of costs, the order of trial Court in two I.As against which these revisions are filed stands revived automatically.

12. Subject to above, I.A. No. 216 of 2016 in O S No. 30 of 2011 and I.A. No. 217 of 2016 in O.S. No. 31 of 2011 are allowed and revisions are accordingly disposed of. It is made clear that there is no expression of opinion on merits of the rival contentions in the suits. No costs. Miscellaneous Petitions, if any pending, stands disposed of.

P NAVEEN RAO,J

DATE: 19.12.2016
TVK

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