

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NOS.3811, 3812, 3813, 3814 AND
3862 OF 2016

DATED:12-08-2016

C.R.P. No.3811 of 2016

- Between:

Yenamala Suryanarayana Reddy ... Petitioner

And

Bheemuni Sai Kumari ... Respondent

COUNSEL FOR THE PETITIONER: Mr. K.K. Durga Prasad

COUNSEL FOR THE RESPONDENT: -

THE COURT MADE THE FOLLOWING:

COMMON ORDER:

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These civil revisions petitions arise out of separate but similar suits - O.S. Nos.54, 55, 56, 57, and 52 of 2011 respectively, on the file of the Junior Civil Judge, Gajuwaka. The petitioner, who is the defendant in all the five suits, is common in all these civil revision petitions. The respondents have filed the suits for perpetual injunction restraining the former from interfering with their possession of the suit schedule properties in the year 2011. At the stage of trial, the respondents/plaintiffs filed interlocutory applications under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) for amendment of the plaint pleadings. It was *inter alia* stated in the affidavits filed in support of these applications that while tracing the title to the suit schedule properties, contrary to the instructions issued by the respondents – plaintiffs, their counsel inadvertently referred the names of wrong persons instead of mentioning correct persons through whom the suit schedule property changed hands. The respondents further pleaded that the said mistake committed by their counsel was neither wilful nor wanton and there was no slightest degree of negligence on the part of the respondents in the commission of those mistakes. The petitioner filed counter affidavits opposing the said applications. However, by orders dt.4.7.2016, the lower Court has allowed the applications.

Mr. K. K. Durga Prasad, learned counsel for the petitioner, strenuously contended that under the proviso to Order VI Rule 17 of CPC, an application for amendment, after commencement of the trial, shall not be allowed unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before commencement of the trial. He further submitted that the respondents

have not pleaded due diligence and that the lower Court without considering the said aspect erroneously allowed the applications. In support of his submissions, he has placed reliance on the judgment of this Court in *Narne Estates (P) Ltd., Secunderabad v. N. Gopal Naidu and others*^[1].

Ordinarily, the Courts must be liberal in allowing applications for amendments so as to avoid multiplicity of proceedings. While the proviso to Rule 17 of Order VI of CPC ordains 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 the trial, a perusal of the order of the lower Court undoubtedly shows that it failed to refer to and discuss as to whether the respondents have satisfied the afore-mentioned requirement under the proviso to Rule 17 of Order VI of CPC. As held by this Court in *Narne Estates (P) Ltd.* (supra), the afore-mentioned proviso was inserted obviously to ensure that the parties will not unduly prolong the litigation and that they are diligent in pursuing the same. It is not the pleaded case of the petitioner that the respondents have filed the applications for amendment of the plaints with a view to prolong the litigation. Fair amount of discretion is vested in the Courts for allowing the amendments, and applications for amendments are generally refused where the Court is satisfied that by permitting such amendment the entire character of the suit will undergo a change or the same causes prejudice to the opposite party, which cannot be compensated by awarding costs. In the instant case, the amendment is sought to correct certain errors committed in the drafting of the plaints in the context of tracing of title to the plaintiffs. As rightly observed by the lower Court, all the documents of title, including the link documents, are already filed and whether the names originally mentioned in the plaints are a mistake or not, is verifiable from the documents brought on record by the plaintiffs. All that the plaintiffs sought for is to permit them to correct the purported mistake with regard

to the names of the persons through whom the suit schedule property changed hands. These amendments being innocuous and harmless, by allowing the same no prejudice will be caused to the petitioner. Indeed, in the counter affidavits no such plea of prejudice has been pleaded. In the afore-mentioned facts of the case, I am not inclined to interfere with the orders of the lower Court, merely because it has not dealt with the aspect of due diligence while allowing the applications for amendment.

For the afore-mentioned reasons, these civil revision petitions are dismissed.

As a sequel to dismissal of the civil revision petitions, C.R.P.M.P. Nos.4921, 4922, 4923, 4924 and 4981 of 2016 filed in the C.R.Ps respectively, shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

12-08-2016

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[\[1\]](#) 2001 (5) ALD 445