

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2149 of 2012

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful 1st defendant, is directed against the orders dated 24.08.2011 of the learned I Additional Senior Civil Judge, Ranga Reddy District passed in I.A.No.1233 of 2010 in O.S.No.422 of 2008 filed by the plaintiffs under Order VI Rule 17 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting for permission to amend the plaint as stated in the affidavit and the petition.

2. I have heard the submissions of the learned counsel for the revision petitioner/1st defendant ('1st defendant', for brevity). There is no representation for the respondents/plaintiffs. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order and the pleadings and submissions of the parties, are as follows:

3.1 The plaintiffs brought the suit against the defendants, including the 1st defendant/revision petitioner, for a perpetual injunction in respect of an agricultural land admeasuring Acs.6.00 guntas in survey number 876 of Korremul village, more fully described in the schedule annexed to the plaint. The 1st defendant is resisting the suit by filing the written statement. During the Pendency of the suit, the plaintiffs filed the aforementioned application for amendment of the plaint. That application was also resisted by the 1st defendant by filing counter. On merits, by the impugned order, the trial Court had allowed the petition and permitted the plaintiffs to amend the plaint as prayed for. Therefore, the aggrieved 1st defendant is before this Court.

3.2 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 perpetual injunction *inter alia*

stating in the plaint that the plaint schedule property was purchased by the plaintiffs' father by virtue of a registered sale deed dated 16.04.1981 for lawful consideration. One Bandlagudam Balaiah is the original pattedar of the land admeasuring Acs.17.23 guntas in survey number 876 situated in Korremul village. The revenue records reflect his name during the period 1970-71. After his death, the names of his legal heirs viz., Bandlagudam Bixapathi and others are entered in the revenue records and their names appeared in the pahanies during the period between 1971-79. The sons and legal heirs of said Bandlagudam Bixapathi, who are the vendors of the father of the plaintiffs sold the plaint schedule property under the above said registered sale deed in favour of the father of the plaintiffs, as stated *supra*. At the time of execution of the sale deed, due to oversight, the survey number was wrongly mentioned in the sale deed as 867 instead of as 876. The father of the plaintiff died on 15.11.2002. About one month prior to the suit, the defendants, who are having muscle power, had tried to threaten the plaintiffs and apply force to sell the plaint schedule property to them. The plaintiffs had refused to sell the plaint schedule property to the defendants. When the defendants had tried to trespass into the property and dispossess the plaintiffs with the evil motive, the plaintiffs' had brought the suit for perpetual injunction. However, the 1st defendant had filed a written statement denying the title of the plaintiffs and made a claim to the property alleging that he had purchased the land admeasuring Acs.3.10 guntas in survey number 876 of Korremul village through a private sale deed dated 15.05.1975 after paying the necessary consideration to the owner Bandlagudam Bikshapathy and that he is in possession and enjoyment of the said land and that after the said purchase, the said land was mutated in his name in the revenue records *vide* proceedings dated 13.05.1995 issued by the Mandal Revenue Officer and that his ownership rights as well as possessory rights are evident from the entries in the revenue records. In view of the denial of the title of the plaintiffs by the defendant and the defence that was taken by the defendants, the plaintiffs are constrained to seek the relief of declaration of title in respect of the plaint schedule property and also the further relief of alteration of entries made in the revenue records, wherein, the names of the defendants were

mentioned as pattedars.”

3.3 On the contrary, the case of the defendants, apart from their defence in the written statement, in brief, is as follows: “The suit is not maintainable. The suit is filed by suppressing the real facts. The material allegation in the plaint that the plaint schedule property was purchased by the father of the plaintiffs is false. To the knowledge of the plaintiffs, the 1st defendant’s name is appearing in the revenue records in respect of Acs.3.10 guntas of land in survey number 876. But, the plaintiffs did not take any steps for rectification of the revenue records; and, they also did not take any steps for rectification of the survey number allegedly incorrectly mentioned in their sale deed. The 1st defendant had purchased the above said extent of land of Acs.3.10 guntas in the year 1975 under a private sale deed and is continuing in possession and enjoyment of the said property till the filing of the written statement and as on today. The plaintiffs, at no point of time, challenged the right, title, interest or the possession of the 1st defendant over the plaint schedule property. The present application for amendment is filed with ulterior motives. If the amendment now being sought for by the plaintiffs is permitted, the same will change the character and nature of the suit and would cause prejudice to the 1st defendant. The plaintiffs, by way of the proposed amendment are introducing entirely a new and inconsistent cause of action. Further, the amendment, if permitted, will oust the jurisdiction of the trial Court on account of enhancement of the value of the suit. The plaintiffs can as well institute a fresh suit instead of seeking the proposed amendment. Therefore, even if the plaintiffs withdraw the instant suit for injunction, no prejudice would be caused to them. The application for amendment is not maintainable in view of the bar contained in the proviso to Order VI Rule 17 of the Code,”

4. At the time of hearing, the learned counsel for the revision petitioner/1st defendant while advancing arguments in-line with the pleadings of the 1st defendant had further submitted as follows: “The plaintiffs are trying to convert

the suit for perpetual injunction into a suit for declaration of title and ownership. If really there was a mistake in the sale deed of the plaintiffs in regard to the survey number, they ought to have taken steps for rectification of the mistake in regard to the survey number in their sale deed. No such steps were taken till date, even though 30 years period has elapsed. The revenue records showing the name of the 1st defendant attained finality as the said entries were not challenged by the plaintiffs by following the procedure established by law. The Court below did not properly consider the contentions of the defendants while permitting the plaintiffs to amend the plaint. The Court below ought to have seen that the plaintiffs can be permitted to withdraw the suit for perpetual injunction and that they can as well institute a suit for declaration of title, if they are advised to do so. The order impugned is not sustainable under facts and in law.”

5. No submissions are made on behalf of the plaintiffs.

6. I have bestowed my attention to the facts and the submissions. I have carefully gone through the pleadings. Before proceeding further, it is profitable to first refer to the legal position obtaining.

In ***J.Samuel and others Vs. 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 Vs. 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.”

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.”

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 thereunder 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 controversy 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 Vs. 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 Vs. 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 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 Vs. 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, in spite 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 Supreme Court further referred to the ratio in the decision in ***Pankaja and another Vs. 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***’s case (7th 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 Vs. 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 dispossessed 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:

In *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.

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.

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).

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.

In *North Eastern Railway Admn. Vs. Bhagwan Das*^[9], the Supreme Court held as follows:

“Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In *Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil* [AIR 1957 SC 363] which still holds the field, it was held 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. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.”

7. The contentions in the revision petition have to be examined keeping in view the precedential guidance. Dealing first with the contention that the issues are framed based on the pleadings and that the trial of the suit would commence with the settlement of the issues and that, therefore, the application for amendment is disqualified in view of the proviso to Order VI Rule 17, it is necessary to refer to the decision in *Usha Devi Vs. Rijwan Ahamd*^[10]. 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 upon 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 Vs. 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 find 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.”

The Supreme Court, having referred to a three-judge Bench decision in ***Sajjan Kumar Vs. Ram Kishan*** ^[11], 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 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 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*** (11th 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.”

In the instant case on hand also, the trial has not commenced. Therefore, in the well considered view of this Court, the facts of present case are akin to the facts of the case in Usha Devi (supra) and Sajjan Kumar (supra). The ratios in the decisions support the plea of the plaintiffs that the amendment cannot be refused merely on the ground of delay.

8. It is to be next noted that in the instant case the plaintiffs, by virtue of the proposed amendment, are intending to seek the relief of declaration of title and also further relief of alteration of revenue entries keeping in view of the denial of title of the plaintiffs by the defendant and his rival claim in the defence urged in the written statement. Further, in view of the ratios in the precedents supra, it is permissible to convert a suit for perpetual injunction into one for declaration of title.

9. Even as per the precedential guidance in the decisions of the Supreme Court an amendment can be permitted if it is intended to determine the real question in controversy; and all amendments, which are necessary for the purpose of determining real questions in controversy between the parties, shall be allowed if such amendments sought for do 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 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 proposed amendment in the instant case also helps in setting at rest the dispute between the parties once and for all. 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. As rightly pointed out, the question whether the plaintiffs would be entitled or not to the proposed reliefs

now being introduced by way of proposed amendment cannot be prejudged while considering an application, which is filed for seeking the amendment of the plaint. If the proposed amendment is allowed, no right accrued to the contesting defendants would get defeated as the said defendants are totally denying the claim of the plaintiffs from the beginning and are contending that the plaintiffs are not entitled to any reliefs. Further, as the refusal of the request seeking amendment does not preclude the plaintiffs from instituting a fresh suit, the refusal of the request leads to multiplicity of the litigation. In the well-considered view of this Court, the amendment, which is being sought having regard to the denials and the rival claims in the defence is permitted, it 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 plaintiffs deserves to be allowed. Having regard to the facts and the ratios in the decisions, this Court finds that it would be a sound exercise of discretion to permit the amendment of the plaint to enable the plaintiffs to seek the reliefs being prayed for. Since the dominant purpose of the Rule is to minimise 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 considered view of this Court. In order to avoid multiplicity of suits, it would be a sound exercise of discretion to permit the amendment being sought for in the pending suit. The well settled rule of practice is not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment, if the plaintiffs seek to do so.

10. Dealing finally with the aspect that if the amendment is permitted and the suit is allowed to be converted into one for declaration of title, the trial Court will lose the jurisdiction to entertain the suit and the jurisdiction of the trial Court would be ousted and that the trial Court would be compelled to return the plaint for presentation to a proper Court having pecuniary jurisdiction, what is to be noted is that on that ground an amendment cannot be refused. Whenever an amendment of the plaint is sought and on allowing

such amendment, which is permissible, the plaint might have to be returned for presentation to proper Court having higher pecuniary jurisdiction shall not have a bearing on the merits of the application filed for amendment. In such cases, the amendment should be permitted by allowing the application; further, after the amendment is carried out and the neat copy of the plaint is filed after paying the additional Court fee, if any, payable in view of the enhanced valuation of the reliefs claimed in the suit, the Court shall return the plaint to the plaintiff for presentation to proper Court to which the suit would go after the amendment is allowed. The view of this Court gets reinforced from the ratio in the decision in **Makireddy Ramayamma v. Menti Kamalakara Rao**^[12]. In this decision, this Court having noticed two divergent views earlier expressed by this Court, had held as follows:

In between the two conflicting views expressed by Ramachandra Rao, J., and Parthasarathi, J., I prefer to agree with the view expressed by Parthasarathi, J., as it is in accordance with the practice that is uniformly followed in the subordinate courts in matters of amendment of pleadings. When the suit which was originally filed could be tried by the District Munsif, it is only the District Munsif that is competent to decide whether the amendment applied for should be allowed or refused on merits. The consideration as to whether subsequent to the amendment the District Munsif would still continue to have pecuniary jurisdiction does not arise at that stage. If as a result of the amendment the suit valuation exceeds the pecuniary jurisdiction of the District Munsif, he would naturally return the plaint for presentation in the proper Court. It will not therefore be right for the District Munsif to refuse the amendment merely on the basis that if the amendment is allowed the suit would be beyond his pecuniary jurisdiction. The impugned order is accordingly set aside and the District Munsif is directed to permit the plaintiff to amend the plaint. It is open to the District Munsif if he is not satisfied with the valuation proposed by the plaintiff. To get the property valued. If on such revaluation he finds that he still has pecuniary jurisdiction, he will proceed with the trial of the suit after giving an opportunity to the defendant to file any additional written statement regarding the valuation of the property.

The decision in **Mount Mary Enterprises v. Jivratna Medi Treat Private Limited**^[13] also supports the view that an amendment of the plaint cannot be rejected on the ground that upon enhancement of the valuation of the suit property, the suit has to be transferred to a Court having a higher pecuniary jurisdiction. The facts of the case show that in a suit for specific performance, the property had been undervalued though the market value of the property

was much higher; and, therefore, the defendant had taken an objection that the property was undervalued by the plaintiffs in the suit. The plaintiffs sought amendment of the plaint to incorporate the correct value of the property. In this background, the Supreme Court had held as follows:

“The main reasons assigned by the trial Court for rejection of the amendment application was that upon enhancement of the valuation of the suit property, the suit was to be transferred to the High Court on its original side. In our view, that is not a reason for which the amendment application should have been rejected.

11. Viewed thus, this Court finds that the trial Court is justified in allowing the application of the plaintiffs. Having regard to the facts and the above said reasons, this court finds that the impugned order brooks no interference.

12. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this civil revision petition, shall stand closed.

M.Seetharama Murti, J

06th June, 2016
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THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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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) 8 SCC 511
[10] (2008) 3 Supreme Court Cases 717

[\[11\]](#) (2005) 13 SCC 89

[\[12\]](#) AIR 1983 AP 11

[\[13\]](#) (2015) 4 Supreme Court Cases 182