

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.3356 OF 2016

ORDER:

1 This Civil Revision Petition, under Article 227 of the Constitution of India is filed assailing the order dated 03.05.2016 passed in I.A.No.495 of 2016 in O.S.No.118 of 2006 on the file of the Court of the Principal Junior Civil Judge, Sangareddy, Medak District, wherein and whereby the petition filed under Order VI Rule 17 CPC by the petitioners was dismissed.

2 Sri E.V.V.S.Ravi Kumar, the learned counsel for the petitioners attacked the order of the trial Court on the following grounds:

1) The trial Court failed to see that Part I of the proposed amendment is nothing but narration of the facts indicating the nature of the suit schedule property and dismissed the entire petition on erroneous grounds. 2) The proposed amendment, even if allowed, would not alter the very nature of the suit or would not cause any prejudice to the respondents. 3) The trial Court failed to consider that in spite of due diligence the petitioners could not get the required information at the time of filing of the suit, that itself is a valid and sufficient ground to allow the amendment petition.

3 *Per contra*, Sri B. Nalin Kumar, the learned counsel for the respondents submitted that the trial Court has rightly considered the scope of Order VI Rule 17 CPC and dismissed the petition by assigning cogent and valid reasons. He further submitted that there is no illegality or irregularity in the impugned order, which warrants interference of this Court to set aside the same by exercising the jurisdiction under Article 227 of the Constitution of India. He would

further submit that if the proposed amendment is allowed, it would certainly, amount to alteration of the nature of the suit as well as the cause of action, which is not permissible under law.

4 In order to substantiate the arguments, the learned counsel for the petitioners has drawn my attention to the ratio laid down in **Ram Niranjan Kajaria vs. Sheo Prakash Kaharia and others**¹ wherein the Hon'ble apex Court held at para No.21 as follows:

21. On amendments generally, in the decision reported in *Revajeetu Builders and Developers v. Narayanaswamy and Sons and Ors.* {(2009) 10 SCC 84}, after referring to *Gautam Sarup* (supra), the principles on amendment have been summarized at Paragraph-63. It has been held as follows:

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
- (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 6 Rule 17. These are only illustrative and not exhaustive.

5 The facts germane to the filing of the present Civil Revision Petition are as follows:

¹ 2016 SAR (Civil) 57

6 Petitioner Nos.1 to 3 and the second respondent are sons of the first respondent. The suit schedule property is situated in Sy.No.439 of Kalivemula village, Sangareddy Mandal of Medak District. The petitioners have filed the suit to declare the gift deeds dated 28.05.1995 and 16.02.2000 executed by the first respondent in favour of the second respondent as void and cancel the same. The respondents filed written statement denying all the averments made in the plaint, *inter alia* contending that the suit as framed is not maintainable under law. When the suit is coming up for arguments, the petitioners have filed the I.A.No.495 of 2016 under Order VI Rule 17 CPC seeking amendment to the plaint by taking different pleas. The trial Court after affording a reasonable opportunity to both parties, has dismissed the said I.A. on merits. Hence the present revision petition.

7 Originally, the suit schedule property, along with some other properties, belongs to one Mukunda Reddy. Ram Reddy, Laxma Reddy, Narasimha Reddy and Hanmantha Reddy are sons of said Mukunda Reddy. Laxma Reddy filed O.S.No.71 of 1981 against his family members for partition of the joint family properties and the said suit was ended in compromise on 18.11.1982. In pursuance of the said compromise, Laxma Reddy executed a gift settlement deed dated 29.03.1983 in favour of the first respondent herein bequeathing the suit schedule property. Basing on the said factual scenario, the learned counsel for the petitioners strenuously submitted that even though the first respondent got the suit schedule property under a gift settlement deed, still it is ancestral joint family property and is not the self acquired property of the first respondent as contended by the

respondents in their written statement. The petitioners have also taken a specific plea in the proposed amendment that the first respondent after getting the suit schedule property under the gift settlement deeds, has thrown the same into the common hotchpot and hence the suit schedule property is a joint family property. The petitioners have also taken a specific plea in the proposed amendment that the petitioners and respondents have partitioned their joint family properties orally on 07.06.1993 and the suit schedule property fell to the share of the petitioners and respondents equally, therefore, the first respondent has no right whatsoever to execute the gift settlement deeds in favour of the second respondent. In all fairness, at the time of arguments, the learned counsel for the petitioners submitted that for one reason or the other, the petitioners have not taken a stand in the plaint that the petitioners and the respondents have partitioned the suit schedule property on 07.06.1993.

8 The first and foremost contention of the learned counsel for the respondents is that the Court has no authority to allow the petition for amendment of pleadings once the trial in the suit has commenced. The crucial question that falls for consideration at this juncture is when the trial commences in a civil suit. In order to resolve the issue, this Court is placing reliance on the ratio laid down in **Kailash v. Nanhku and Others**² wherein the Hon'ble apex Court observed at para No.13 as follows:

“In a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial or for making the case ready for trial.”

² 2005 (3) ALD 102 (SC) = (2005) 4 SCC 480

9 In ***Ajendraprasadji and another vs. Swami Keshavprakeshdasji***

and others³ the Hon'ble apex Court held at para No.57 as follows:

“.....Either treating the date of settlement of issues as date of commencement of trial or treating the filing of affidavit which is treated as examination in chief as date of commencement of trial, the matter will fall under proviso to order 6 Rule 17 CPC....”

10 As observed supra, the petitioners have filed the I.A.No.495 of 2016 at the time of arguments, which is undisputedly, after a long time of commencement of the trial. Establishment of ingredients of the proviso to Order VI Rule 17 CPC is *sine qua non* to allow the petition for amendment of pleadings if the same is filed after commencement of the trial in the suit. In order to resolve the issue in this revision, it is apposite to extract Order VI Rule 17 CPC, which reads as under:

17 Amendment of Pleadings:- The Court may at any stage at the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

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.

11 A perusal of the proviso to the above Rule mandates that in spite of due diligence of the petitioner he could not take such a plea at the time of filing of the suit, or before commencement of the trial, the Court can allow the petition for amendment. In ***Vidyabai and others vs. Padmalatha and another***⁴

“.....The court's jurisdiction to allow such an application is taken away unless the conditions precedent therefore are satisfied, viz., it 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.”

³ (2006) 12 SCC 1

⁴ (2009) 2 SCC 409

12 This Court has carefully scanned the plaint, affidavit filed by the petitioners in support of the petition and the counter filed by the respondents before the trial Court in order to ascertain whether the petitioners have satisfied the ingredients of the proviso to Order VI Rule 17 CPC. The petitioners have not taken a specific plea in the affidavit that they came to know the facts pleaded in the proposed amendment for the first time. To put it in a different way, despite due diligence the petitioners could not get the relevant and necessary information at the time of filing of the suit, more particularly, about the throwing the suit schedule property by the first respondent into the common hotchpot and factum of oral partition in the year 1993 so as to fit the case of the petitioners within the purview of proviso to Order VI Rule 17 CPC. The petitioners are none other than the sons of the first respondent. No where it is mentioned that for the first time they came to know about the factual aspects as pleaded in the proposed amendment. A perusal of the affidavit filed in support of the petition clearly demonstrates that whatever pleaded by the petitioners was within their exclusive knowledge even by the time of filing of the suit. If that is so, the petitioners are not entitled to take shelter under the guise due diligence as ordained in proviso to Order VI Rule 17 CPC. Once the parties to the proceedings failed to establish in spite of due diligence they could not take specific stand in the pleadings, the jurisdiction of the Court to entertain the amendment petition is taken away.

13 A suit for declaration to declare a gift deed as null and void cannot be equated with that of a suit for partition. The nature of the pleas to be taken and evidence to be adduced in a suit for declaration

is entirely different to that of the pleas to be taken and the nature of evidence to be adduced in a suit for partition. Even assuming but not conceding that the suit schedule property is a joint family ancestral property of the petitioners and respondent Nos.1 and 2, the plea of joint family ancestral property automatically ceases in view of the stand of oral partition dated 07.06.1993 taken by the petitioners themselves. It is a fundamental principle of law that in a civil suit, pleadings form bedrock. A duty is cast on the parties to the proceedings, more particularly, in a suit for declaration to take their specific stand at the earliest point of time under any circumstances before framing of issues, thereby to enable each party to adduce evidence oral and documentary to substantiate their respective stands. No party shall be allowed to take diametrically opposite stand at the far end of the proceedings to the dismay of the opposite party. Allowing of the parties to the proceedings to take such type of pleas at the endpoint of the proceedings, would certainly amount to encouraging the litigant public to file all type of petitions to protract the litigation to the maximum extent possible.

14 It is an axiomatic that in a civil suit the defendant is entitled to take any number of inconsistent pleas, but, such a legal right is not available to the plaintiff. It is needless to say that the defendant is not entitled to take mutually self destructive pleas. The very object of Order VI Rule 17 CPC is to come to the rescue of the litigant public who came to know about a new fact during the course of trial. If bringing of such a new fact to the notice of the Court will enable the Court to adjudicate the lis once for all, then, certainly the Court shall allow the petition for amendment of pleadings without insisting on

technicalities. In the instant case, the petitioners have filed the suit as if the suit schedule property is a joint family ancestral property even though the first respondent got it under a settlement deed dated 29.03.1983. This Court is not inclined to express any opinion whether the property in question is a joint family property or the self acquired property in the hands of the first defendant in view of the pendency of the main suit. Ultimately, the trial Court has to decide the controversy involved in the suit.

15 It is very difficult to reconcile part I with part II of the proposed amendment in order to allow the petition. It is the contention of the learned counsel for the petitioners that the trial Court instead of dismissing the petition in its entirety by placing reliance on part II of the proposed amendment, ought to have allowed the petition at least to the extent of Part I of the amendment, which is nothing but narration of facts to substantiate that the property in question is a joint family ancestral property for which the petitioners have laid proper foundation in the plaint itself.

16 It is very easy to swallow the argument advanced by the learned counsel for the petitioners but highly difficult to digest it as the Court has to take into consideration the totality of the facts and circumstances of the case. As observed earlier, the plaintiff in a civil suit is not entitled to take mutually self destructive pleas. The same principle would equally apply to the amendment petitions also. Part II of the proposed amendment is quite contrary to Part I of the proposed amendment. By any stretch of imagination, it cannot be presumed that the proposed amendment is in consonance with the pleadings in the plaint. If the amendment petition is allowed, certainly it would

amount to alteration of the nature of the suit to certain extent, which is not permissible under law. The case of the petitioners does not fall within any one of the principles laid down in Ram Niranjana Kajaria (1 supra).

17 The trial Court has assigned reasons much less cogent and valid reasons for dismissing the petition. The findings recorded by the trial Court are supported by material available on record much less legally admissible material. Taking the facts and circumstances of the case, I am of the considered view that the order under revision does neither suffer from any fundamental infirmity nor any jurisdictional error, which warrants interference of this Court under Article 227 of the Constitution of India.

18 For the above discussion, this Civil Revision Petition lacks merits and is accordingly dismissed as devoid of any merit. However, the trial Court is hereby directed to dispose of the main suit in accordance with law, without being influenced by any of the observations made in this revision petition. Consequently, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

Date: 9th September, 2016
Kvsn

T. SUNIL CHOWDARY, J