

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.2441 OF 2016

Date: 01.07.2016

Between:

The Vijayanagar Colony Railway Staff Co-operative
Housing Society Ltd., rep.by its Chairman, K.C.Mohan
S/o Kanakaiah and two others.

.. Petitioners/petitioners
(plaintiffs)

AND

Pingili Ranadheer Reddy s/o. P.Vijayapal Reddy,
Aged about 57 years, Occu: Business, r/o.H.No. 2-10-289,
Waddepally, Hanamkonda, Warangal and others.

.. Respondents/ respondents
(defendants)

This Court made the following:

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ORDER:

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1. Petitioners are the plaintiffs. Petitioners filed O.S.No.497 of 2006 on the

file of I Additional Senior Civil Judge, Warangal praying to grant perpetual injunction restraining the defendants and their men from interfering into the peaceful possession and enjoyment of the plaintiffs over the suit schedule property.

2.1. The facts to the extent necessary are as under:

The petitioners purchased the land to an extent of Ac.5.20 guntas. Ac.1.20 guntas in Sy.No.47 and Ac.4.00 guntas in Sy.No.48 of Kadipikonda village, Ghanpur Gram Panchayat, Warangal District. Alleging that defendants 1 and 2 removed the bushes, boundary stones and plot numbers and attempted to interfere by dispossessing the plaintiff society from the suit land by removing the boundary stones, the instant suit is filed. During the pendency of the suit, I.A.No.1111 of 2013 filed by plaintiffs to implead the respondents 3 to 6 therein as defendants 3 to 6 and to amend the pleadings, was ordered on 19.06.2015. Justification given for making the defendants 3 to 6 as parties to the suit was that they claim to have purchased the suit schedule land from defendants 1 and 2 and were trying to change the physical features of the suit schedule property and attempting to dig the trenches in violation of the *status quo* orders granted by the High Court in CRP No.711 of 2010 and trying to raise structures.

2.2. As seen from the order under challenge, issues were framed on 05.10.2009. After taking several adjournments, chief-examination affidavit of P.W.1 was filed on 06.02.2013. On 08.03.2013 P.W.1 was examined in-chief and Exs.A1 to A16 were marked. On 04.07.2013, 28.04.2014 and 08.10.2014 P.W.1 was examined. On 25.11.2014 further evidence of plaintiffs were closed. However, by orders in I.A.No.1343 of 2014, further cross-examination of P.W.1 was ordered at the instance of the defendants. Defendants 3 to 6 filed written statement on 16.09.2015. After hearing both sides, issues were re-cast on 29.01.2016. At the request of the petitioners, further chief-examination of the petitioners was allowed on 23.02.2016.

2.3. At this stage, petitioners filed I.A.No.259 of 2016 under Order VI Rule 17 of CPC read with Rule 28 of the Civil Rules of Practice praying to permit the petitioners to amend the plaint and schedule by incorporating relief of mandatory injunction. By the amendment of schedule, petitioners seek to divide the suit schedule property into three separate units with three different descriptions. By way of amendment of prayer, petitioners now seek direction to defendants to remove illegal structures. This is in addition to the relief already sought.

3. The I.A. was hotly contested on both sides. On detailed consideration of the rival claims, the trial Court held that if amendment was allowed, the very nature of the suit schedule property would be changed. Trial Court noticed that proposed amendments are not tallying with the boundaries mentioned in the map enclosed to the plaint and no fresh map with specific boundaries of each bit was filed and, therefore, ambiguity in respect of actual suit schedule property is still continuing. With reference to the amendment of prayer, the trial Court observed that no specific date of construction of houses was mentioned in the affidavit accompanying petition. The Court noticed that in the affidavit filed in support of I.A.No.1111 of 2013, there was no averment that respondents had already constructed unfinished houses. The Court noticed that High Court modified injunction order to that of order of *status quo* and thus, unless specific plea is raised in the affidavit accompanying petition, as to the date of constructions made by the respondents 3 to 6, it would be difficult to allow the amendments incorporating the relief of mandatory injunction. The trial Court also noticed that while disposing of CRP No.711 of 2010 by order dated 26.11.2010, the High Court directed disposal of the suit within the period of three months from the date of receipt of copy of that order. For various reasons, suit could not be disposed of and if the prayer sought by the petitioners is allowed, it would amount to reopening the case to the stage of fresh recording of evidence and would further delay the process. Thus, trial Court was not inclined to exercise the discretion vested under Order VI Rule 17 of CPC and dismissed the said I.A.

4.1. Elaborate submissions are made by the learned counsel Sri G.Ramachandra Reddy and Sri G.L.Narasimha Rao for the respective parties. Both counsels reiterated the submissions as urged before the trial Court.

4.2. Mr. G.Ramchander Reddy placed reliance on the following decision:

i) **Kasula Surender Reddy and another v. M.Ravinder Reddy and others** ^[1]

4.3. Sri G.L.Narasimha Rao placed reliance on the following decisions:

i) **N.Raghotham Rao (died) per L.R. and another v. M.C.H. rep. by its Special Officer and another** ^[2];

ii) **Ayesha Rizwana v. Mushtaq Ahmed** ^[3];

iii) **Kodali Rajendra Prasad v. Bandaru Napoleon** ^[4]; and

5. Sri Ramchander Reddy specifically contended that the petitioners sought amendment of suit schedule to reflect correct description of the boundaries in order to avoid further complications at the stage of enforcement of decree. Further, as petitioners are giving up claim on the land occupied by Government to an extent of Ac.1.31 guntas in Sy.No.48, the correct reflection of boundaries is necessary after excluding the land in occupation of Government. Revised suit schedule describes the boundaries of the subject properties by dividing into three units. Learned counsel also contended that since added defendants were in illegal occupation of the land purchased by the petitioners and undertaking constructions, the additional prayer is sought. The additional prayer is in continuation to the relief already prayed by them in the suit and, therefore, by virtue of amendment sought by the petitioners to the schedule appended to the plaint as well as prayer in the plaint, no prejudice would be caused to the defendants and on the contrary, such amendments are necessary for proper adjudication of the claim. By relying on the decision of this Court in **Kasula Surender Reddy** (supra), learned counsel contended that liberal approach is required whenever the prayer is sought for amendment of pleadings and prayer and object of the Courts is to decide the rights of the parties and not to punish them for mistakes made in the conduct of their cases.

6. The principles of law on exercise of jurisdiction by the trial Court on an application filed under Order VI Rule 17 of CPC is well settled and needs no reiteration. The broad principles that emerge from the long line of precedents are: (1) in spite of exercise of due diligence, the parties could not have raised the matter before the commencement of the trial; (2) the amendment sought for is imperative for proper and effective adjudication of the case; (3) refusing to amend should not result in injustice or lead to multiple litigation; (4) the amendment intend to bring real question in controversy between the parties and refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff succeeding in the suit; and (5) a liberal approach is required to be adopted whenever the pleadings set up by the parties are sought to be amended subject of course to the restriction that no prejudice and no rights of the parties are going to be impaired in the process and cannot be adequately compensated in monetary terms.

7. The consideration of above principles depends on facts of a given case.

On consideration of the pleadings and the contentions urged in the instant revision petition, I am of the considered opinion that petitioners are not falling into the category where the Court should adopt liberal approach and allow the amendment of relief and the schedule. As noticed by the Court below, when petitioners instituted I.A.No.1111 of 2013, they raised similar pleas as now raised. Thus, by the time the said I.A. was filed to implead the defendants 3 to 6, petitioners were aware that the defendants, according to them, were in unauthorized occupation of the land purchased by petitioners and they were trying to alter the physical features of the land and attempted to make permanent constructions. However, no endeavour was made to amend the prayer also at that time. No reasons are forthcoming as to why petitioners chose to wait for three long years. To realize that there was a mistake made by them to amend the prayer as sought now, in the facts of the case, cannot be believed. As noticed by the trial Court, the pleadings are not clear and specific as to when such constructions were made by the defendants 3 to 6 and which portion of the suit schedule land was in occupation by them. Even in the amended schedule, there is no mention of structures made by defendants 3 to 6. As noticed by the trial Court, boundaries are not tallying. No specific justification is shown as to why amendment is sought for the schedule.

8. It is appropriate to note that suit was instituted in the year 2006. In spite of directions issued by this Court fixing the time of three months to dispose of the suit as early as in the year 2010, the suit is yet to be disposed of. The frequent filing of the petitions is one of the major reasons for delay in disposal of the suits and long pendency of the cases before the trial Courts. The parties should be aware of their rights and the pleas that can be urged while instituting the civil litigation. Allowing the applications in this manner could only protract the litigation. Quits to the litigation should be given and this kind of dilatory tactics should not be encouraged. Ordinarily amendment of the plaint after commencement of the trial ought not to be allowed except in exceptional circumstances. Even in such cases such plea can be accepted if no prejudice would be caused to other parties. As noticed by the trial Court and referred to above, petitioners have not exercised due diligence and apparently they are playing dilatory tactics to protract the litigation.

9. Having regard to the facts on record, I am of the opinion that if the prayer sought by the petitioners in I.A.No.259 of 2016 is granted, it will be altering the physical features of the suit schedule property and the reliefs prayed. Therefore, it cannot be said that such amendment if allowed would not cause prejudice and would not impair the rights of the defendants 3 to 6. The trial

Miscellaneous petitions if any pending shall stand closed.

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- [\[1\]](#) 2016 (1) ALD 437
 - [\[2\]](#) 1996 (4) ALT 126
 - [\[3\]](#) 2013 (6) ALT 186
 - [\[4\]](#) 2014 (6) ALT 813
 - [\[5\]](#) 2016 (3) ALT 288