

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4307 of 2015

ORDER:

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This civil revision petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner/plaintiff is directed against the orders dated 27.08.2015 of the learned IX Junior Civil Judge, City Civil Court, Hyderabad passed in IA.no.259 of 2015 in OS.no.593 of 2015 filed under Order VI Rule 17 of the Code of Civil Procedure and Rule 28 of the Civil Rules of Practice requesting the Court to permit the plaintiff to amend the plaint as stated in the affidavit and petition list.

2. I have heard the submissions of the learned counsel for the revision petitioner/plaintiff ('the plaintiff', for brevity) on 25.04.2016. As there was no representation for the respondent/defendant ('the defendant', for brevity) on that day, the matter was directed to be listed today for hearing the learned counsel for the defendant. Even today also, there is no representation for the defendant. Hence it is treated that the defendant has no submissions to make. I have perused the material record.

3. The facts necessary for consideration, in brief, are as follows:

The plaintiff had brought the suit for a perpetual injunction in respect of an immovable property admeasuring 116 Square yards situate at Dilawargunj, Mangalhat more fully described in the schedule annexed to the plaint. The defendant having filed a written statement is resisting the suit. While so, the plaintiff had filed the aforementioned application for amendment of the plaint mainly contending as follows: 'The defendant, on 06.04.2015 at about 03:30 PM, had broken open the locks of the two rooms in the suit schedule property and had forcefully occupied the two rooms by taking advantage of the fact that the Court below did not grant an interim order. Therefore, it has become necessary to seek the relief of recovery of possession of the said two rooms by seeking necessary reliefs and

consequential amendments in the plaint.’ That application was resisted by the defendant *inter alia* contending as follows: ‘The amendment of the plaint sought for, if permitted, would change the nature of the suit. The defendant had filed the written statement with documents establishing his possession. The plaintiff had sold a part/share of the property to the defendant. The defendant is the owner of the entire schedule property. Therefore, the plaintiff cannot be permitted to amend the plaint.’ The Court below having considered the pleadings and submissions, and on merits had dismissed the application filed by the plaintiff for amendment observing that the application filed by the plaintiff for restoration of possession was dismissed by the Court and that if the amendment as sought for is permitted, it would change the nature of the suit and that the proposed amendment also would introduce a new cause of action in the plaint and that if such amendment is permitted, it would cause prejudice to the defendant. Having been aggrieved of the said orders, the plaintiff had preferred this Revision petition.

4. The learned counsel for the plaintiff while reiterating the case of the plaintiff, which is stated supra, would contend that the observations of the Court below in the impugned order are unsustainable and that in the instant suit, the trial has not commenced; and that the allowing of the amendment would be helpful in deciding the real dispute between the parties; and that the amendment is based on a subsequent event and is intended to shorten the litigation and safeguard the rights of the plaintiff; and that, therefore, the Court below ought to have allowed the amendment.

5. As already noted, no submissions are made on behalf of the defendant.

6. The law is now well settled that a suit for perpetual injunction can be permitted to be converted into a suit for recovery of possession. In **Pankaja and another v. Yellappa (D) by LRs and others**^[1] 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 had 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.

7. In the case on hand, the case of the plaintiff is that the defendant, on 06.04.2015 at about 03:30 PM, had broken open the locks of the two rooms in the suit schedule property and had forcefully occupied the two rooms by taking advantage of the fact that the Court below did not grant an interim order and that therefore, it has become necessary to seek the relief of recovery of possession of the said two rooms by seeking necessary reliefs and consequential amendments in the plaint. Whether the said averments stated in the proposed amendment are true or not need not be gone into while entertaining an application for amendment. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing the prayer for amendment. The only question to be considered is as to whether the plaintiff can be permitted to amend the plaint and seek the relief of recovery of possession based on the alleged subsequent event. Be it noted that the suit is filed for perpetual injunction and that the defendant is denying the right, title and interest and also the possession of the plaintiff over the subject property. In view of the said defence, if the plaintiff is permitted to amend the plaint and seek the relief of recovery of possession, no prejudice would be caused to the defendant; It is apt to note that the ratio in the decision in **Pankaja and another v. Yellapa (supra)**, 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.”

Further, in **Abdul Rehman and Another v. Mohd. Ruldu and Others**^[2], the Supreme Court, having taken note of the 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, inspite 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 present case, the amendment, if permitted, would avoid multiplicity of litigation and really sub serves the ends of justice. The provision in the Code in regard to amendment is intended to avoid multiplicity of litigation and to enable the parties to have the cause disposed of effectually in the pending litigation without driving the parties to further litigations. In the well-considered view of this Court, if the amendment is permitted, the amendment which is based on events subsequent to the institution of the suit also helps in avoiding the multiplicity of the proceedings and in setting at rest the dispute between the parties. In the case on hand, the plaintiff is not debarred from instituting a new suit seeking the relief of recovery of possession on the same basic facts as are pleaded in the proposed amendment. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the amendments being sought for in the pending suit. As per the precedential guidance, the well settled rule of practice is not to dismiss the suit automatically but to allow the plaintiff to make necessary amendment if the plaintiff seeks to do so.

8. Therefore, for all the aforesaid reasons, this Court holds that the granting of amendment of the plaint really sub-serves the ultimate cause of justice and avoids further litigation and that therefore, the amendment sought for by the plaintiff deserves to be allowed. Viewed thus, this Court finds that the order impugned is unsustainable and warrants interference.

9. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.no.259 of 2015 in OS.no.593 of 2015 is allowed permitting the plaintiff to amend the plaint. The plaintiff is directed to carry out the amendments and file a neat copy of the plaint before 15.06.2016. On filing of such amended neat copy of the plaint, the trial Court shall give an opportunity to the defendant to file additional written statement to answer the additional pleadings in the amended plaint.

There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

27th April, 2016

Note:-

Issue CC by .05.2016
(B/o)
Vjl

[\[1\]](#) AIR 2004 SC 4102 (1)

[\[2\]](#) 2013(1)ALD 1(SC)