

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2271 of 2016

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ORDER

This revision is filed under Article 227 of the constitution of India, challenging the order dated 01.04.2016 passed in IA.No.223/2016 in OS.No.65/2009 by the Junior Civil Judge, Rajam, whereby, the petition filed under Order VI Rule 17 of CPC, was dismissed on the ground that it is barred by limitation.

The petitioner/plaintiff filed suit for permanent injunction initially before the trial Court and later the respondents/defendants filed written statement disputing the title of the petitioner/plaintiff on 31.03.2009. Since the defendants denied title of the petitioner, the petitioner filed the application in IA.No.223 of 2015 seeking amendment to convert the suit filed for permanent injunction into suit for declaration of title over the schedule property. The specific allegations made in the affidavit which are necessary for deciding the present controversy are extracted hereunder.

The plaintiff purchased the plaint schedule land admeasuring 0.50 cents, situated at Saradhi Village in Rajam Nagarapanchayat limits in Survey No.106/2, covered in patta No.193 under registered sale deed, dated 23.01.2008 for a valuable consideration of Rs.1,50,000/- from Makka Appalanaidu and his sons, obtained possession of the said land from his vendors and since then the plaintiff has been in exclusive possession and enjoyment of the said land as absolute owner. His vendor Makka Appalanaidu and his son Vasubabu were having title and possession over the plaint schedule property which they got under registered settlement deed dated 02.03.1974 from

Mirthireddi Thavitinaidu-1st defendant and his son who is 2nd defendant. Petitioner's vendor Makka Appalanaidu is the brother-in-law of the 1st defendant and maternal uncle of defendant No.2. As the defendants threatened to interfere with the possession of the petitioner, he filed suit for injunction simplicitor.

In the written statement the respondents/defendants raised specific contention that the plaintiff has no title over the schedule property and that the registered sale deed dated 23.01.2008 is unenforceable. It is also contended that the settlement deed dated 02.03.1974 executed in favour of Makka Appalanaidu was cancelled by executing a revocation deed dated 13.09.1984 and thereby the sale deed dated 23.01.2008 is not valid and that the plaintiff is not entitled to seek relief under Order VI Rule 17 CPC for amendment of plaint to enable the plaintiff to claim declaration of title over the schedule property by virtue of purchase from Makka Appalanaidu and two others who acquired the property under a gift deed.

The respondents/defendants filed counter denying material allegations mainly on the ground that the proposed amendment is barred by limitation while reiterating the factum of revocation of settlement deed by executing a revocation deed etc.

The trial Court upon hearing argument of both the counsel dismissed the application declining to permit the petitioner to amend the plaint on the ground that it is barred by limitation and on the other ground that it would change the nature of suit.

Aggrieved by the order passed by the trial Court in IA.No.223 of 2015, present revision is filed.

Sri K.Purushotham, learned counsel appearing for petitioner/plaintiff contended that the proposed amendment will not change the nature of suit and will not take away the right that accrued to the respondents/defendants and therefore the limitation does not come in the way of ordering amendment and placed reliance on the Judgment of the Apex Court in ***Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil and others***^[1] and further contended that the amendment can be allowed when the proposed amendment would not change the nature of suit. In support of his contention the counsel placed reliance on the Judgment rendered by the Apex Court in ***Abdul Rehman and another v. Mohd.Ruldu and others***^[2]. It is further contended that the limitation is mixed question of fact and law and for the suits filed for relief of declaration articles 64 and 65 of the Limitation Act, 1963 are applicable, but not article 58 and drawn the attention of this Court to the Judgment of this Court in ***Mechineni Chokka Rao and others v. Sattu Sattamma***^[3]

Sri Mamidi Rama Rao, learned counsel appearing for respondents/defendants mainly contended that Article 58 of the Limitation Act, 1963 governs the limitation period for suits filed for declaration and that the limitation starts from the date of right to sue first accrues. Therefore, the relief of declaration of title by way of proposed amendment is barred by limitation and further the nature of the suit would be change completely on account of incorporation of proposed amendment. In support of his contention he placed reliance on the Judgment of Supreme Court in ***L.C.Hanumanthappa v. H.B.Shiva Kumar***^[4].

In view of rival contentions, the question before this Court is; ***“Whether the amendment can be allowed on the ground that the proposed claim is barred by limitation.”***

Admittedly, the suit was instituted in the year 2009 before the trial Court and the defendants filed written statement on 31.03.2009. Issues were also framed within few months thereafter and the plaintiff filed his affidavit under Order 18, Rule 4(2) of Code of Civil Procedure in lieu of examination in chief on 19.09.2014 but the witness was not cross examined. It is brought to the notice of this Court that prior to institution of the suit a notice was published in Eenadu Telugu Daily on 02.03.2007 by the respondents/defendants informing the public that they are the owners of the schedule property and also filed a protest petition before the Sub-registrar, Rajam on 05.03.2007 raising an objection for registration of any document produced by the petitioner/plaintiff for registration of a document pertaining to schedule property. Subsequently, the defendant got issued a legal notice through his advocate on 29.01.2008 raising a specific contention that the plaintiff has no title on account of revocation deed revocking the settlement deed. Thus, the right of the plaintiff and his vendor was denied as early as in the month of January, 2008. Despite denial of title, the plaintiff did not choose to file a suit for declaration but filed a suit for injunction simplicitor and filed the present petition for converting the same into a declaratory suit from injunction suit.

The learned counsel for the petitioner mainly contended that the suit for declaration is governed by Articles 64 and 65 of the Limitation Act and placed reliance on the Judgment of this Court in ***Mechineni Chokka Rao case (cited supra 3)*** wherein this Court took a specific view that the limitation for the suits filed for

declaration pertains to immoveable property is under Articles 64 and 65 but not Article 58 of the Limitation Act, 1963 in conformity with the scheme of the Act. But, whereas the Law Commission in its 89th report recommended for the amendment of Article 58 by adding the words “*without seeking further relief*” after the word “*declaration*” in the first column of Article 58 so as to avoid any confusion. But, so far no such amendment has been brought as recommended, to Article 58 of the Limitation Act, 1963. Even a bare look at article 58 of Limitation Act, 1963, the limitation is three years which starts from the date when the right to sue first accrues. The specific article which governs relief of any other declaration which reads as follows;

	Description of suit	Period of limitation	Time from which period begins to run
58.	To obtain any other declaration	Three years	When the right to sue first accrues.

In the present case a cloud has been created by the defendant on the title of the plaintiff on the date of issue of legal notice dated 29.01.2008. In such case the suit is to be filed within three years from the date of cloud created over the title of the plaintiff. Article 64 and 65 deals with recovery of immoveable property based on previous possession and title respectively but not for declaration. Therefore, I am unable to agree with the contention of the learned counsel for the petitioner that the specific article applicable to the suit for declaration is Article 64 and 65 of Limitation Act, but I am of the view that the specific article applicable to the suit for declaration is Article 58 of Limitation Act, 1963. Therefore, the principle laid down in the above Judgment

cannot be applied.

One of the major contention of the counsel for the petitioner is that though the proposed relief by way of amendment is barred by limitation the amendment can be allowed and placed reliance on the Judgment of Supreme Court in **Pirgonda Hongonda Patils case (cited supra 1)** wherein at para-10 it was held as follows;

“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... but I refrain from citing further authorities, as, in my opinion, they all lay down precisely the same doctrine. That doctrine, as I Understand it is that amendment 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. It is merely a particular case of this general rule that where a plaintiff seeks to amend by setting up a fresh claim in respect of a cause of action which since the institution of the suit had become barred by limitation, the amendment must be refused; to allow it would be to cause the defendant an injury which could not be compensated in costs by depriving him of a good defence to the claim. The ultimate test therefore still remains the same; can the amendment be allowed without injustice to the other side, or can it not?”

In the aforesaid Judgment, the Supreme Court did not lay down any specific law that the amendment though barred by limitation has to be allowed. But, laid down a principle that the amendment which is barred must be refused since it would cause the defendant injury which could not be compensated in costs by depriving him of a good defence to claim and laid down a test that, ‘can the amendment be allowed without injustice to the other side,

or not’.

The above principle laid down by the Supreme court was considered by the Apex Court in **L.C.Hanumanthappa’s case (cited supra 4)** wherein the Apex Court referred the aforesaid Judgment at paras 16 and 21 and held that an amendment to introduce new relief which is barred by time cannot be allowed.

If the principle laid down in **L.C.Hanumanthappa case** is applied to the facts of the present case, relief claimed by the petitioner is hopelessly barred by limitation. Even earlier to this Judgment the Apex Court in ***Munilal v. The Oriental Fire & General Insurance Company Limited and another***^[5] held that a time barred claims cannot be allowed.

In view of these Judgments and the principle laid down and considered in Patils case, the relief claimed to incorporate a time barred amendment cannot be allowed by exercising power under Order VI Rule 17 CPC.

The Apex Court in ***Ramesh Kumar v. Rajmala Exports Private Limited and others***^[6] and ***Ravajeetu Builder’s and Developers v. Narayanaswamy and Sons***^[7] laid down the following principles to be followed while considering the petition filed under Order VI Rule 17 of CPC:

“ 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 VI Rule 17. These are illustrative and not exhaustive.

It is clear that while deciding the application for amendment ordinarily the Court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the Courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.”

The Apex Court further held that amendment application be filed immediately after filing suit i.e., before commencement of trial. If the petitioners are able to prove or explain as to how they failed to take steps before the trial is commenced despite exercising due diligence, the Court can allow such amendment. The factum of exercising due diligence depends upon circumstances.

Learned counsel for the petitioner placed reliance on **Rajesh**

Kumar Aggarwal and others v K.K.Modi and others ^[8] wherein

the Apex Court held that

“The object of Order 6 Rule 17 is that the Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. The rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. The Court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting mala fide. The amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. The Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice.”

It is further held that

“While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment.”

Learned counsel for the petitioner also placed reliance on ***Delhi Development Authority v S.S.Aggarwal and others*** and ***Chander Kanta Bansal v Rajinder Singh Anand***^[9]. In both these judgments, the Supreme Court, while discussing about applicability of proviso to Order VI Rule 17 of C.P.C., held that suits filed prior to amendment are not governed by the proviso. Therefore, these two judgments are not necessary for deciding the present dispute for the reason that the suit was filed subsequent to Act 22 of 2002.

Learned counsel for the petitioner further placed reliance on

Bairam Susheela v Pendota Rama Rajaiah^[10], wherein it was held that,

“Mere grant of permission to amend the pleadings does not confer or take away the rights of the parties. On the basis of the amendment, necessary issues have to be framed after giving an opportunity to the other party and evidence has to be adduced on the issues so framed, if necessary. It shall always be open to the parties to raise such pleas as are open to them touching on the relief introduced through amendment.”

In the facts of the above judgment, the suit was filed for declaration of title and perpetual injunction, which was dismissed, and filed petition under Order VI Rule 17 of C.P.C. to introduce relief of recovery of possession on the ground that the respondent pleaded that the petitioner was dispossessed from the property. The facts of the above decision are identical to the present facts of the case but the principle laid down in the above judgment did not deal with proviso to Order VI Rule 17 of C.P.C. since the suit relates to the period prior to amendment of Order VI Rule 17 of C.P.C.

In ***A.Krishna Rao V A. Narahari Rao and others***^[11], this Court, while dealing with an application under Order VI Rule 17 of C.P.C, held that

“Rejection of petition under Order VI Rule 17 of C.P.C., on the ground that proposed amendment is inconsistent with original plea and petitioner cannot be permitted to raise such inconsistent plea is not justified. Amendment of pleading cannot be rejected even if proposed amendment has effect of raising conflict in plea. It is for the plaintiff to justify his pleadings and prove the same with reference to evidence. Since the procedure being handmaid of justice, a party cannot be deprived of his right to raise pleadings by way of amendment unless proposed amendment results in failure of justice.”

In view of the principles laid down in the above judgments, the Courts have to allow amendments if petitions under Order VI

Rule 17 of C.P.C. are filed before commencement of trial. If petitions are filed after commencement of trial, the petitioners have to show that amendment could not be made in spite of exercise of due diligence. Here, the petitioners explained the reason for their failure to amend the plaint, more particularly based on boundaries of schedule property and boundaries of property purchased by the 1st respondent and dismissal of E.P.No.16 of 2011 in O.S.No.1994 of 2007, contending that schedule property is vacant site and effective possession cannot be proved but the trial Court, disbelieving their contention, held that the petitioners failed to prove their possession as on the date of filing suit and dismissed the suit for declaration and consequential permanent injunction. Therefore, the present amendment necessitates to avoid multiplicity of proceedings and to shorten the litigation.

Learned counsel for the 1st respondent mostly based his argument on proviso to Order VI Rule 17 of C.P.C. and drawn attention of this Court to ***Ravajeetu Builders and Developers case*** (7th supra), wherein the Apex Court laid down certain tests which are extracted above. In para No.61 of the same judgment, it was held that

“The Courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs. The imposition of costs is an important judicial exercise particularly when the Courts deal with the cases of amendment. The costs cannot and should not be imposed arbitrarily.”

Even according to the principles laid down in the above judgment, if amendment is necessary for deciding real controversy, Court may allow such amendment, if the proposed amendment shortens the litigation and avoids multiplicity of proceedings, but on payment of costs.

Learned counsel for the 1st respondent further drawn attention of this Court to ***Majati Subbarao V P.V.K.Krishna Rao (deceased) by L.Rs*** ^[12], wherein the Apex Court held that

“When a new ground is taken in re-joinder, an issue was framed by trial Court to the knowledge of opposite party but no objection was raised at that time by the opposite party. In such case, amendment cannot be allowed at appellate stage.”

Learned counsel for the 1st respondent also placed reliance on ***Jagajeevan Panigrahi and others Vs Gelala Somayya***^[13], wherein this Court held that,

“The petitioners cannot seek amendment at a belated state (sic.stage) setting up a claim for possession of suit property for the institution of a fresh suit would be barred by limitation. The amendment cannot be allowed, as it seriously prejudices the respondent and the valuable right accrued to the respondent during the pendency of the suit to raise the plea of adverse possession would be defeated.

No doubt the petitioner/plaintiff filed suit for permanent injunction initially, though his title was denied by the respondents/defendants even prior to filing of the suit by issuing notice dated 02.03.2007. Even after filing written statement by the respondents/defendants, the petitioner did not choose to take steps to amend the plaint raising appropriate plea for amendment. Therefore, the present amendment is hopelessly barred by limitation and that the petitioner did not exercise due diligence in prosecuting the proceedings by getting the plaint amended by filing a petition under Order VI, Rule 17 CPC. Hence, the order of the trial Court cannot be found fault. The other contention raised by the petitioner is that when the nature of the suit would not change on account of the proposed amendment, the amendment can be allowed. In support of his contention he relied on ***Abdul Rehman’case (cited spura 2)*** wherein the Apex Court held that the powers of the Court to permit the parties to amend the pleadings are wide and can be exercised at any stage of the

proceedings in the interest of justice and that the main purpose of allowing amendment is to minimize the litigation. Therefore the amendment barred by limitation has to be considered in the light of the facts and circumstances of each case and change of nature of suit is not a ground to deny the amendment.

The proposition laid down by the Apex Court is not in quarrel. However, the Court has to consider the question of limitation based on circumstances of each case by applying the same principle to the present facts. I find that the relief sought to be introduced by way of amendment under Order VI, Rule 17 of CPC is barred by limitation as the cloud has been created on the title of the plaintiff long before institution of the suit i.e. on 29.01.2008 by the respondents/defendants by issuing a legal notice through his advocate. Therefore, in view of the law declared by the Apex Court referred to supra, a time barred relief cannot be allowed by amending the plaint under Order VI, Rule 17 CPC. Therefore, the finding of the trial Court does not suffer from any illegality to interfere by exercising power under Article 227 of the Constitution of India. Hence, I find no grounds to set aside the order of the trial Court.

Accordingly, the Civil Revision Petition is dismissed confirming the order dated 01.04.2016 passed by the Junior Civil Judge, Rajam, in IA.No.223/2016 in OS.No.65/2009. No order as to costs.

Miscellaneous petitions, if any, pending in the Civil Revision petition shall stand closed.

M.SATYANARAYANA MURTHY, J

05.08.2016

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- [\[1\]](#) AIR 1957 SUPREME COURT 363(1)
 - [\[2\]](#) 2012 (6) ALT 41 (SC)
 - [\[3\]](#) 2006(1) ALD 116
 - [\[4\]](#) (2016) 1 Supreme Court Cases 332
 - [\[5\]](#) AIR 1996 SC 642
 - [\[6\]](#) 2012 (4) ALT 1 (SC)
 - [\[7\]](#) 2009 (13) SC 366
 - [\[8\]](#) AIR 2006 SC 1647
 - [\[9\]](#) 2008 (5) SCC 117
 - [\[10\]](#) 2004(5) ALT 233
 - [\[11\]](#) 2015 (1) ALT 113
 - [\[12\]](#) AIR 1989 SC 2187
 - [\[13\]](#) 1998 (3) ALD 280