

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.2908 of 2015

ORDER:

This revision petition under Article 227 of the Constitution of India by the unsuccessful petitioners/plaintiffs 1 and 2 is directed against the order dated 26.03.2015 of the learned Principal Junior Civil Judge, Puttur, Chittoor District, passed in I.A.no.993 of 2014 in OS.no.12 of 2003 filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) and Rule 28 of A.P. Civil Rules of Practice, 1980, requesting to permit them to amend the plaint as stated in the affidavit and the petition list.

2. I have heard the submissions of Sri P.V. Vidyasagar, learned counsel for the revision petitioners/plaintiffs ('the plaintiffs', for brevity) and Sri M. N. Narasimha Reddy, learned counsel for the 1<sup>st</sup> respondent/defendant ('the defendant', for brevity). The 2<sup>nd</sup> respondent is one of the petitioners in the aforesaid IA and as such she is stated to be not a necessary party. I have perused the material record.

3. The case of the plaintiffs, as stated by the 2<sup>nd</sup> plaintiff in her affidavit filed in support of the request for amendment of the plaint, in brief, is as follows:

Subsequent to the filing of this suit, the defendant, instigated by his sons, got filed OS.No.110 of 2003 with regard to Northern portion of the properties by suppressing the filing of the instant suit. Originally the plaint schedule property was in S.Nos.100/ 2B and 100/ 3C of village accounts of Kothapallimitta and the same are changed as S.Nos.100/ 7 and partly as S.No.100/ 2. Without issuing any notices to the plaintiffs, there was a change of sub-letters of S.Nos.100/ 2B & 103/ 3C as S.Nos.100/ 7 and S.No.100/ 2. The same came to knowledge of the plaintiffs when a report was filed by the Court Commissioner after making an inspection of the plaint schedule property along

with the Mandal Surveyor. Even the Commissioner has not correctly mentioned the boundaries of the property. The defendant and his sons, who are the plaintiffs in OS.no.110 of 2003, trespassed and illegally occupied shops S-13 to S-15 measuring East-West: 32 feet and North-South: 43 feet; and shops S-19 to S-24 measuring East-West: 69 feet and North-South: 12 feet; and also Ac.0.50 cents of land in third item of the plaint schedule and had illegally constructed a roofed house therein on 14.10.2013 and are in illegal occupation of the above said nine shops and land. In item no.1A of the plaint schedule there is a house bearing D.No.4/ 12B (old D.No.3/ 61), which consists of ground floor and first floor. In the first floor there are two portions. The defendant stayed there upto 2002 and later as disputes have arisen, the defendant had left the said plaint schedule property and was staying with his first wife. While so, on 14.10.2013, he illegally occupied upper portion and is staying in the upstairs without any right. The 2<sup>nd</sup> plaintiff is staying in the ground floor. The defendant and his sons by obtaining collusive documents from the Panchayat officials and the authorities of APSPDCL have been claiming the nine shops, which is a portion of third item in the plaint schedule, and also ACC roofed house and vacant site of Ac.0.20 cents. As the sons of the defendant illegally occupied the said nine shops and other property, an application was filed to permit to implead them as defendants 2 to 4 and seek the reliefs of recovery of possession of the occupied properties. As the Advocate Commissioner has given wrong boundaries and as there is also change of S.Nos.100/ 2B & 3C the present petition seeking amendment of the plaint is filed by furnishing the correct boundaries and new survey numbers of the plaint schedule. The previous counsel by oversight and by mistake gave wrong boundaries. The proposed amendment is not going to change the nature and character of the suit; and no loss or damage would be caused to the defendant, if the proposed amendment is allowed; if the permission for amendment is refused, the plaintiffs would suffer irreparable loss and damage.

4. The defendant while reiterating his defence resisted the application of the plaintiffs by filing a counter. The material averments in the said counter, in brief, are as follows:

The material allegations in the application and in the affidavit filed in support of the petition are false. As per provisions of Order VI Rule 17 of the Code, amendment cannot be allowed after commencement of the trial. The defendant, in his written statement filed in the year 2003 itself, stated that the description of the plaint schedule with regard to the boundaries, measurements and survey numbers is incorrect. However, the plaintiffs did not take any steps for amendment before commencement of trial. In the written statement it was also stated that the plaintiffs have falsely included the properties of P. Subramanyam Reddy, Prakash Reddy, P. Raja, P. Munikanna Reddy, P. Chandrasekhar Reddy and P. Sudarshan Reddy. The report of the Advocate Commissioner filed in OS.No.110 of 2003 is marked in the present suit. To disprove the contentions of the plaintiffs, PW1 was cross examined with regard to the survey numbers, extent and boundaries of the plaint schedule properties. To fill up the lacunae, the present petition is filed. The petitioner is well educated. At this stage, she cannot plead ignorance and say that a mistake crept in her pleadings. She cannot throw blame on the previous counsel. The proposed amendments will cause great injustice and prejudice to the defendant. The defendant is a senior citizen aged more than 81 years of age and is suffering from several ailments. The proposed amendment will change the nature and character of the suit. The suit was filed only for perpetual injunction; the plaintiffs have to prove their possession as on the date of the filing of the suit. The trial has concluded. The defendant proved that the plaintiff is not in possession and enjoyment of the suit schedule properties. The said fact could be seen from the admissions made by PW1. The plaintiffs filed the present petition to drag on the matter for some more years, having come to a conclusion that they will lose their case. The

boundaries mentioned in the present petition are contrary to the boundaries mentioned by PW1 during her cross examination. Therefore, the contentions in the present petition are also false. The amendment with regard to dispossession from the property and boundaries of property cannot be made as per the law laid down in the decisions reported in 2012 (6) ALT 450 and 2013 (6) ALT 186. The amendment cannot be permitted where there is lack of due diligence as per the decision reported in 2012 (2) ALT 40. The amendment of plaint cannot be allowed after commencement of the trial as per the decision reported in 2011 (5) ALT 562. There are no merits in the petition and the same is filed to harass the defendant. The petition is barred by limitation. The petition may be dismissed with exemplary costs.

5. At the time of enquiry before the trial Court, no oral and documentary evidence was adduced on either side.

6. The trial Court dismissed the application of the plaintiffs, *inter alia*, holding that the plaintiffs could not establish that despite due diligence they could not have raised the matter before the commencement of the trial and that the amendment now sought for by the plaintiffs was within the knowledge of the plaintiffs as there was a lengthy cross examination by the learned counsel for the defendant in respect of the disputed property and that if the petition is allowed retrial has to be conducted and that as a consequence thereof all the witnesses have to be recalled and further examined and cross-examined and that the said course is not open and is impermissible unless the plaintiff proves that her claim comes within the purview of proviso to Rule 17 of Order VI of the Code and that it is evident from the contents of the affidavit filed in support of the petition that the petition is not maintainable.

6.1 Therefore, the aggrieved petitioner/2<sup>nd</sup> plaintiff filed this revision petition. The 1<sup>st</sup> plaintiff died.

7. The learned counsel for the plaintiffs would contend as follows: “The order impugned is unsustainable being contrary to law. The court below failed to appreciate that the events subsequent to the filing of the suit necessitated the plaintiffs to seek amendment of the plaint so as to claim the relief of recovery of possession as an ancillary measure. The Court below should have appreciated the fact that it is quite necessary to order the amendment, as sought for, to avoid multiplicity and the necessity of filing another suit in respect of the same subject matter. The court below ought to have seen that the amendment is necessary for the reason that the boundaries of the suit schedule properties require to be corrected. The court below ought to have seen that by amendment the plaintiffs are not attempting to change the nature of the suit much less the cause of action. The court below failed to see that the application was filed with due diligence. The court below should not have been obsessed with the fact that the application for amendment was filed after commencement of the trial. The trial Court ought not to have held that the application filed after commencement of trial entails dismissal and that the amendment, if permitted necessitates the re-trial of the suit and therefore, the amendment cannot be permitted. The court below ought to have seen that on refusal of permission to amend the plaint, the plaintiffs have been deprived of an opportunity of proving their case. The reasoning adopted by the court below for dismissing the amendment application is not justified.”

8. The learned counsel for the defendant while supporting the orders of the Court below would submit that the plaintiffs could not show that they could not seek the proposed amendment earlier despite due diligence and hence, in view of the proviso to Order VI Rule 17 of the Code, the present application for amendment shall not be allowed as the law is well settled that trial commences with framing of the issues. He further submitted as follows: ‘Raising certain contentions that there was a change of the survey numbers by the revenue authorities without notice to the plaintiffs and that a trespass was

allegedly made into the various shops in item no.1 of plaint schedule and also open site of Ac.0.20 cents and that a ACC roofed house was constructed thereon and that a trespass was also made into the upper portion in item No.1A of the plaint schedule, the plaintiffs are seeking the proposed amendment of the plaint and plaint schedule. However, by way of the proposed amendment the plaintiffs are not only seeking permission to add paragraph 10A in the plaint but also are changing the survey numbers, the boundaries on all sides of certain items of the property besides description of various items of plaint schedule by freshly incorporating door numbers which were not there in the said various items of the original plaint schedule. The plaintiffs are also intending to add Shop numbers S13 to S15 (three shops) and S19 to S24 (five shops) in item number 3 of the plaint schedule by showing separate boundaries for each set of shops viz., three shops and five shops. Thus, the plaintiffs are changing the entire plaint schedule and are now intending to substitute a new plaint schedule in the place of the original plaint schedule. The said course is impermissible. The amendment if permitted would completely change the plaint schedule and the nature and character of the suit and therefore the defendants would be required to file fresh detailed written statement and consequently new issues are to be settled and a retrial has to be held in the matter, which is now at the advanced stage of hearing of arguments. The plaintiff alleges trespass by the defendant and his sons into certain items of the plaint schedule property, during the pendency of this suit. The sons of the defendant are not parties to the suit. Earlier, an application was filed for adding the sons of the defendants as parties to the suit. That application was returned and not pursued. Eleven years thereafter, the present application is filed for amendment of the plaint. Since the sons of the defendant are not parties to the suit, even if the amendment is permitted, the plaintiff cannot get a decree against the sons of the defendant and therefore, the application seeking amendment is misconceived and is devoid of merit.'

9. I have bestowed my attention to the facts and the submissions. I have carefully gone through the pleadings. Though the proposed amendment is being objected to on the ground of delay and the bar postulated in the *proviso* to Order VI Rule 17 of the Code, the said aspect requires consideration if only the plaintiff crosses the first hurdle that the amendment of the plaint deserves to be allowed on facts peculiar to case and on its own merit. Therefore, the factual aspect has to be first considered. Hence, it is now necessary to examine in juxtaposition the original plaint schedule and the proposed new plaint schedule being sought to be introduced by way of proposed amendment. In the first place it is to be noted that in the original plaint schedule there are only three items namely item no.1 with 1(a) and 1(b), item 2 and item 3. They read as under:

Chittoor District – Karvatinagarm Sub-District S.R.Puram Mandal – 49  
Kothapallemitta village within the following boundaries:

Item No.1(a): Survey No.100/2B, 2 stair terraced house and full compound wall covering the house - East-West: 32 feet; North-South: 27 feet;  
West of: Govinda Reddy, Sulochana vacant site;  
East of: Item No.2 property and vacant side;  
South of: Shops and Puttur-Chittoor Road;  
North of: vacant site compound wall

Item No.1(b): 4 shops

North of: item No.1A house

South of: Chittoor-Puthur Road

East of: House entrance way

West of: Govinda Reddy tiled house. Extent East-West:43 feet; North-South: 11 feet

Total item 1(a)&(b) 1337 Sq.feet.

Item No.2:

Survey No.100/2B terraced house. Extent East-West:21 ft: North-South:55 ft.

Vacant site: 14 x 3 ft

South of: Puthuru-chittoor road

North of: vacant site

East of: shops and Tirupathi road

West of: vacant site between item 1 and 2 of the property passage

Total item No.II, 1155 Sq.feet

Item No.3: Survey No.103/3/C: vacant site

North of Colony road, Kothapalle

South of: Item No.1 and 2 property;

East of: Tirupathi Road and shops

West of: Rangammal compound

dry land 0.70 cents. 6 rooms (12 x 10 feet, each room)

3 rooms (25 x 10 feet, each room)

Were constructed in this dry land

[Reproduced verbatim]

Now it is apposite to note the proposed new schedule being sought to be introduced by way of amendment, ('new schedule', for brevity) which reads as under:

'After para 10 add the following words in para 10-A

The defendant in this suit on 14-10-2013 without any manner of right interest or possession trespassed and illegally occupied upper portions in item No.1A of the plaint schedule, and sons of the defendants in the suit and plaintiffs in O.S.No.110/2013 on without any manner of right, interest or possession have trespassed and illegally occupied S13 to S15, S19 to S24 and also item No.3 of the plaint schedule property and constructed ACC roofed house and also bath room and they are in illegal occupation of the same and they are liable to surrender vacant possession of the items claimed in the amended plaint.

In item No.1A remove the words S.No.100/2B and add as 100/7 add the words upper floor 2 portions bearing old D.No.3/61, 3/62, 3/62A, New D.No.4/12B1 to B2.

Value 60,000/-

Correct boundaries:

East: Vacant site, Entrance way and also house of plaintiffs

West: State of Govinda Reddy and Sulochanamma

North: Vacant site

South: Shops S1 to S4 as shown by the Commissioner in the plan in Chittoor –Puttur Road.

In item No.3 remove the words S.No.103/3C and add S.No.100/7 & 100/2. Add shops S13 to S15 (3 shops) boundaries for the above 3 shops:

Value 60,000/-

East: Tirupati-Chittoor Road

West: Vacant site of plaintiffs

North: Shops of Raja, Prakash Reddy & Subramanyam Reddy

South: Entrance way to old post office house (item No.2)

In the same item No.3 add shops S19 S24 situated in S.Nos.100/7 & 100/2 boundaries for the above 6 shops:

Value 1,20,000/-

East: House of Subramanyam Reddy

West: Compound wall of Rangamma

North: Kothapalli Colony Road

South: Vacant site of plaintiffs/petitioners

In same item No.3 remove the S.No.103/3C and S.Nos.100/7 & 100/2 a site of 0-50 cents of land in this ACC roofed house and bathroom, value 60,000/-

boundaries:

East: Shops S13 to S18 as shown by the Commissioner in his plan

West: Compound wall of Rangamma

North: Shops S19 to s24

South: Compound wall

In para-11 after the date 16-1-2003 at about 10-00 add the date as "14-10-2013 when the defendant in the suit and also the sons of the defendant and who are the plaintiffs in OS.No.110 of 2003 have illegally trespassed and occupied the proposed amended petition schedule properties".

In para-12 page-7 of the plaint after the words jurisdiction add the word as Rs.3,00,000-00 and pays a court fee of Rs.2,050-00 under Section 29 of APCF Act.

In the particulars of valuation column add the following words:

|                                                       |             |
|-------------------------------------------------------|-------------|
| Market value of the suit properties                   | 3,00,000-00 |
| 3/4 <sup>th</sup> market value of the plaint schedule | 2,25,000-00 |
| Court fee paid under section 29C of APCF Act          | 2,050-00    |

In para 13 after the words Column C add the following words:

Directing the defendant in the suit and also proposed defendants 2 to 4 to surrender vacant possession of the entire petition schedule properties and if they fail to do the same, the same may be done through process of this Hon'ble Court.

In the schedule portion in page 8 of the plaint schedule:

In Item No.1A-2 stair terraced house and full compound wall covering the house. In this upper portions 2 in number situated in S.No.100/7 boundaries:

East: Vacant site, Entrance way and also house of plaintiffs

West: site of Govinda Reddy and Sulochanamma

North: Vacant site

South: Shops S1 to S4 as shown by the Commissionr in the plan in Chittoor-Puttur Road

In item No.3- remove the S.No.100/3C and S.No.100/7 and 100/2 vacant site in an extent of 0-50 cents in this S-13 to S15 shops within the following boundaries:

East: Tirupati-Chittoor Road

West: Vacant site of plaintiffs

North: Shops of Raja, Prakash Reddy & Subramanyam Reddy

South: Entrance way to old post office house (item No.2)

Total measurement: East-Wet:32 feet, North-South:43 feet

In the same item No.3 add S.No.100/7 and 100/2 by removing 103/3C add shops S19 to S24 as shown by the Commissioner in his plan:

Boundaries:

East: House of Subramanyam Reddy

West: Compound wall of Rangamma

North: Kothapalli Colony Road

South: Vacant site of plaintiffs/petitioners

Total measurement East-West:69 feet, North-South:12 feet

In the same item No.3 add the S.No.100/7 and 100/2 by removing 103/3C in this an extent of 0-50 cents in which there is ACC roofed, house and bath room within the following boundaries:

East: Shops S13 to S18 as shown by the Commissioner in his plan

West: Compound wall of Rangamma

North; Shops S19 to S24

South: Compound wall

Consequential amendment:

After para 10 add the following words in para 10-A

The defendant in this suit on 14-10-2013 without any manner of right interest or possession trespassed and illegally occupied upper portions in item No.1A of the plaint schedule, and sons of the defendants in the suit and plaintiffs in OS.No.110/2013 on without any manner of right, interest or possession have trespassed and illegally occupied S13 to S15, S19 to S24 and also item No.3 of the plaint schedule property and constructed ACC roofed house and also bath room and they are in illegal occupation of the same and they are liable to surrender vacant possession of the items claimed in the amended plaint.

[Reproduced verbatim]

10. A careful examination of each item of the original schedule of the plaint and the proposed new schedule would lay bare that the proposed amendment if allowed brings about drastic changes in the original schedule and literally substitutes a new schedule in the place of the original schedule insofar as certain items, viz., 1(a) and 3 of the original plaint schedule. It is apt to note some such sweeping changes which are as under:

In item No.1(a) of the original schedule, there is only a mention of 2 stair terraced house whereas in the proposed new schedule there is a mention of upper floor 2 portions with three old door numbers and one new door number besides change of boundaries on all the four sides.

Similarly, in item no.3 of the original schedule there is only one item whereas by way of proposed new schedule the plaintiffs are

intending to introduce three items. In item no.3 of the original schedule there is a mere mention that it is a vacant site within the boundaries stated therein; and underneath the said schedule there is a mention of details of dry land of an extent of Ac.0.70 cents besides 6 rooms and 3 rooms in the said dry land; whereas in the proposed new schedule, items 1 and 2 of item 3 deal with shops 13 to 15 (three shops) and shops 19 to 24 (five shops) within specific boundaries. Similarly, in item no.3 of the said item in the proposed new schedule there is a mention of Ac.0.50 cents of land with ACC roofed house and bathroom within specific boundaries. Thus, the item no.3 in the original schedule is being sought to be substituted by three items as stated above by way of proposed new schedule.

In the light of these changes pointed out supra, the contentions of the defendant that the proposed amendment, if permitted, completely and drastically changes the said items of the schedule of the plaint and thereby the basic structure of the suit will be altered and that the entire evidence that is brought on record will be set at naught and that the defendant would be required to file fresh pleadings and that retrial has to be held after settling issues afresh and that therefore great hardship and prejudice would be caused to the defendant, merit consideration. It is settled law that post-trial amendments which cause prejudice and result in injustice to the opposite party shall not be permitted. It is also settled legal position that in a case of this nature where the other party cannot be placed in the same position, in case the amendment is permitted, and when the amendment if permitted causes injury which cannot be compensated in costs, such amendment shall not be permitted. It is necessary to recall that the present amendment petition is filed when the suit is at the stage of arguments. It is admitted and it is also borne out by the record that earlier an application was filed by the plaintiff for addition of the sons of the defendant as party defendants to the suit and that

application was returned and not re-presented and the said remedy was not pursued. Eleven years after the institution of the suit, the present application for amendment is filed without seeking the other relief of impleadment of the sons of the defendant as party defendants to the suit. Assuming for a moment that the contention of the plaintiff that during the pendency of the suit, the sons of the defendant had also trespassed into some portions of the original plaint schedule property is true, even then the allowing of the amendment now being sought for would not serve any purpose as the sons of the defendant are not parties to the suit and the plaintiff despite allowing the proposed amendment would not be entitled to any decree against the sons of the defendant as they are not parties to the subject suit. In that view of the matter also, the proposed amendment being sought for by the plaintiff cannot be permitted. It is no doubt true that by way of amendment of plaint a suit for perpetual injunction can be permitted to be converted into one for recovery of possession when the plaintiff alleges that the defendants trespassed into the suit property during the pendency of the suit. However, the instant case is not a case where on an alleged subsequent event of trespass, the plaintiffs are merely seeking the conversion of the suit for perpetual injunction into one for recovery of possession; in the instant suit the plaintiffs are also seeking permission to amend the item 1A and item 3 of the original plaint schedule completely much to the disadvantage of the defendant. It is also true that the power of granting amendment is a wide and unfettered discretionary power and while considering an application for amendment, the correctness or the falsity of the case in the proposed amendment shall not be considered. It is also true that an amendment, which is necessary for the purpose of determining the real controversy between the parties and shortening the litigation, can be permitted provided allowing of such amendment does not cause prejudice to the opposite party. It is also true that if allowing of amendment is just and fair, such amendment can be allowed even at a belated

stage of the proceedings. However, the above said legal principles cannot be applied to the case on hand as the very nature of the proposed new amendment on a plain perusal suggests that the proposed amendment is *prima facie* not *bona fide* and cannot be permitted for the reasons already assigned *supra*. Therefore, the decisions in *Rajesh Kumar Aggarwal and others v. K.K. Modi and others* [(2006) 4 SCC 385]; *Baldev Singh and others v. Manohar Singh and another* [(2006) 6 SCC 498] and *Amar Singh Chetri v. Bijay Chandra Moda and others* [AIR 1993 Gauhati 50] which were relied upon by the learned counsel for the plaintiffs are not helpful to the plaintiffs in view of the facts peculiar to the case on hand.

11. Viewed thus, this court finds that on the facts of the case itself, the amendment of the plaint as sought for by the plaintiffs is impermissible and cannot be granted. Hence, there is no need to consider the aspect of delay in seeking the amendment and the bar provided under proviso to Order VI rule 17 of the Code. Even otherwise, the amendment of the plaint being sought eleven years after the institution of the suit and when the suit is at the stage of hearing arguments, cannot be permitted, in the facts and circumstances of the case. On the above analysis, this Court finds that the trial Court is justified in passing the impugned order and that the revision is devoid of merit.

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

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

28<sup>th</sup> November, 2016  
Vjl

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M. SEETHARAMA MURTI, J