

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.536 OF 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India, challenging the order dated 30.12.2015 passed in I.A.No.539 of 2015 in A.S.No.98 of 2014 on the file of VI Additional District and Sessions Judge, Sompeta, whereby, the petitioner/plaintiff was permitted to amend the plaint incorporating additional relief of declaration of title to the schedule property.

2. The petitioner/plaintiff filed petition under Order VI Rule 17 of the Code of Civil Procedure (for short 'CPC'), to amend para-VII(i) of the plaint contending that she filed a suit for recovery of possession of plaint schedule property after ejecting the respondents and also for mandatory injunction directing the respondents to demolish the constructions raised by them in the plaint schedule property.

3. The respondents/defendants filed written statement contending that the property does not belong to the petitioner/plaintiff and that she has no right or title to the property thereby not entitled to recover possession of the property, without seeking declaration of title. It is further contended that she could not seek relief of declaration of title, since recovery of possession is larger than relief of declaration of title, under the impression that the possession can be granted if the plaintiff is able to establish her title to the property but the trial Court held that the suit is not maintainable without claiming declaration of title to the property, dismissed the suit.

4. Aggrieved by the judgment and decree of the trial Court, the plaintiff filed appeal in A.S.No.98 of 2014 on the file of VI Additional District and Sessions Judge, Sompeta. During pendency of the appeal, the present petition is filed seeking amendment of the plaint claiming additional relief of declaration of title and sought relief

to relate back to the filing of the suit.

5. The defendants filed counter denying material allegations of the plaint while admitting the suit claim in the plaint contending that the plaintiff is not entitled to amend the plaint at the stage of the appeal claiming declaratory relief. It is further contended that the claim of the plaintiff is barred by limitation and if the amendment is permitted it would totally change the nature of the suit and prayed for dismissal of the petition.

6. Upon hearing argument of both the counsel, the trial Court in a short para i.e., para-7 of the order discussed the case of both parties, while holding that the Order VI Rule 17 CPC consists of two parts. According to the First Part, the Court may at any stage of the proceedings allow either party to amend his pleadings and the Second Part is amendment shall be made for the purpose of determining real controversy between the parties. Therefore, wide discretionary power is conferred on the Court to allow amendment of the pleadings of the party in such a manner and on such terms as the Court finds just and proper, allowed the amendment.

7. Aggrieved by the order passed by the appellate Court in I.A.No.539 of 2015, the present revision is filed raising specific contention that despite framing a specific issue as to the maintainability of the suit, the respondent/plaintiff did not choose to get the plaint amended but filed the application after dismissal of the suit to cure the defect in the case of the plaintiff and that the proposed claim for declaration of title is barred by limitation since the proposed amendment is claimed after 13 years.

8. It is further contended that the observation of the appellate Court that the Court may at any stage of the proceedings allow either party to amend its pleadings to determine the real controversy between the parties is always subject to Limitation Act and proviso under Order VI Rule 17 CPC which interdicts amendments subsequent to

commencement of trial. But the appellate Court totally ignored the bar under Law of Limitation and under proviso to CPC as amended by Act 22 of 2002, erroneously ordered the petition and prayed to set aside the same.

9. During hearing, Sri K.Manik Prabhu, the learned counsel for the petitioners/defendants would contend that when relief sought for by way of amendment, filing a petition under Order VI Rule 17 CPC is barred by limitation, the petition cannot be allowed and placed reliance on the judgment of the Apex Court in **L.C.Hanumanthappa(since dead) represented by his legal representatives v. H.B.Shivakumar**^[1].

10. He also further contended that when an issue was framed by the trial Court about the maintainability of the suit for recovery of possession and for mandatory injunction without seeking declaratory relief, proceeded with trial, without taking any steps to amend the plaint itself indicates that the respondent/plaintiff was not diligent in prosecuting the proceedings and on this ground alone the petition is liable to be dismissed and finally prayed to dismiss the petition in I.A.No.539 of 2015 in A.S.No.98 of 2014 allowing this revision petition setting aside the order passed by the appellate Court.

11. Sri M.V.Suresh, learned counsel for the respondent specifically contended that the amended provisions of C.P.C. are not applicable to the proceedings as the suit was filed before amendment of CPC by Act 2 of 2002. It is also contended that the bar under proviso to Order VI Rule 17 CPC has no application.

12. The proposed amendment would not change the nature of the suit or it would not take away the valuable right that accrued to the defendants if any and that it is necessary for deciding the real controversy between the parties. In such circumstances, the Court allowing amendment petition filed under Order VI Rule 17 CPC cannot be faulted as pleading can be amended at any time and drawn the attention of this Court to the following judgments:

Bogirouthu Suryakantham v. Kandhi Sanyasinaidu^[2], Edla Shobha Rani v. Yegurla Rambabu^[3], L.J.Leach and Co., Ltd v. Messrs. Jairdine Skinner and Co.,^[4], Mettu Naresh Kumar Reddy v. Nellore Ramamma^[5], Bevera Appalanaidu v. Yelagada Raju^[6], Nimmaraju Samba Sadasiva Sarma v. Potharaju Venkateswara Rao (Died) and others^[7], V.Bali Reddy v. Divisional Engineer, APSEB (Operation), Nandyal^[8], K.Chinna Biddamma v. J.Krishnama Naidu^[9], Revajeetu Builders and Developers v. Narayanaswamy and sons^[10] and Abdul Rehman v. Mohd.Ruldu^[11]

13. On the strength of the above legal position, when no further evidence is required to decide the claim for declaration of title the Court can allow amendment liberally, if the suit is filed post amendment of CPC by Act 2 of 2002 and prayed to dismiss the revision petition confirming the order passed by the 1st appellate Court under challenge.

14. Considering rival contentions and perusing the material available on record, the points that arise for consideration are as follows:

1. Whether the suit was filed before the trial Court, prior to commencement of Act 2 of 2002 amending CPC, if not whether the amended provisions of CPC are applicable to the suit?
2. Whether the proposed amendment would change the nature of the suit claim, takes away the valuable right of the defendants that accrued to them on account of lapse of time if not whether amendment of the plaint at the stage of appeal be permitted?

In Re-Point No.1 and 2 :

15. According to the respondent, the suit was filed prior to

commencement of Act 2 of 2002 i.e., amendment to CPC. The respondent filed copy of the plaint which discloses the date of filing of the suit before the trial Court to decide whether the provisions of the amended CPC by Act 22 of 2002 are applicable or not. As seen from the judgment of the trial Court, the suit was filed before the trial Court on 15.04.2002.

16. The respondent herein filed suit for injunction before the trial Court and the same was contested by the revision petitioners herein by filing written statement specifically contending that the relief of recovery of possession after evicting the revision petitioners cannot be granted, without seeking declaration of title to the plaint schedule property. But the trial Court decreed the suit. Aggrieved by the decree and judgment, the respondent herein filed appeal in A.S.No.98 of 2014 which is pending before VI Additional District & Sessions Judge, Sompeta. During pendency of the appeal the respondent herein filed a petition under Order VI Rule 17 of CPC, seeking permission to amend the plaint claiming relief of declaration of title to the property on the ground that the respondent herein has not prayed for declaration of title in view of the fact that the relief of recovery of possession is sufficient. As such, the relief of declaration of title and recovery of possession can be granted, only if she is able to establish her title to the property. But the trial Court held that the suit for recovery of possession is not maintainable without seeking declaration, to cure the defect or mistake inadvertently, committed by the respondent herein before the trial Court, mostly due to ignorance of law, the petition under Order VI Rule 17 of CPC, is filed before the appellate Court.

17. The respondents therein opposed the petition on the ground that the relief of declaration is barred by limitation and it cannot relate back to the date of filing of the suit before the trial Court. The proposed amendment would cause prejudice to the revision petitioners and that it would change the nature of suit, takes away valuable right that accrued to the petitioners herein. Therefore, at the

stage of first appeal the amendment cannot be permitted. Moreover the Court cannot permit such amendment after commencement of the trial and prayed to dismiss the petition.

18. The trial Court in its creptic order consisting of 12 lines in one para concluded that the power of this Court under Order VI Rule 17 of CPC, is purely discretionary and the Court may at any stage of proceedings allow either party to amend the pleadings to determine the real controversy between the parties.

19. Now, the findings recorded by the appellate Court is challenged in the revision by the defendants in the suit and respondents in I.A.No.539 of 2015 on various grounds.

20. The first and foremost contention raised by the revision petitioners is that the proposed amendment would alter the nature of suit and takes away the valuable right that accrued to the revision petitioners, if the amendment is allowed. Apart from that, the Court cannot permit the plaint be amended after commencement of trial in view of proviso to Order VI Rule 17 CPC. But the appellate Court has allowed the amendment without considering any of the objections raised by the revision petitioners. Learned counsel also contended that when the relief sought by way of amendment is barred by limitation the same cannot be allowed and to support his contention, he placed reliance on the judgment of the Apex Court in ***L.C.Hanumanthappa's case referred supra***.

21. Whereas, learned counsel for the respondent Sri M.V.Suresh contended that the amended provisions of CPC, have no application since the suit was filed prior to amendment of CPC, by Act 22 of 2002 by placing reliance on the judgment reported in ***Bogirouthu Suryakantham's case*** and ***Edla Shobha Rani's case referred supra***. He also contended that, if, amendment is allowed, that would not change the nature of suit and it remains as a suit for land or title or based on title. Apart from that the amendment can be allowed in a routine manner, if the suit is filed prior to amendment of CPC, and

placed reliance on several judgments of the Apex Court and this Court.

22. He further contended that on account of amendment of the plaint, no further evidence need be let in and basing on the evidence available on record, the issue can be decided and the question of limitation would not arise in the present facts of the case, even otherwise that can be decided only at the time of hearing of appeal.

23. As seen from the material on record including the date of filing of suit, it is evident that the suit was filed on 15.04.2002. Whereas the amendment to CPC, came into force with effect from 01.07.2002. Thus, Order VI Rule 17 of CPC which is procedural law and such amendment will have no prospective effect. Therefore, the provisions of amended CPC, cannot be applied to such plaints.

24. In a judgment of this Court reported in ***Bogirouthu Suryakantham's case referred supra***, this Court held that the proviso to Order VI rule 17 came into force by Act 22 of 2002 has no application to the suit filed prior to the Amendment Act, came into force. In ***Edla Shobha Rani's case referred supra***, this Court reiterated the same principle.

25. Recently this Court in another judgment placing reliance on the law declared by the Apex Court in ***A. Krishna Rao Vs A.Narahari Rao and others***^[12] held that the proviso under Order VI Rule 17 which came into force with effect from 01.07.2002 has no application to the suits instituted prior to commencement of the proviso. This Court in ***T. Venkata Ravamma and others Vs Karnati Lakshamma and another***^[13] held that the law prior to amendment alone is applicable to the suits instituted prior to 1.07.2002.

26. Learned counsel for the revision petitioners mostly contended that proviso to Order VI Rule 17 of CPC, which disables the respondent to claim relief in the present petition more particularly to amend the pleadings. According to Order VI Rule 17 of CPC, the

Court may at any stage of 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. However, the principles to allow amendment petitions under Order VI Rule 17 of CPC, are well settled; they are viz., that the amendment shall not alter the basic structure or nature of the claim and that the amendment shall not take away the valuable right that accrued to the respondent or such amendment will not take away the unequivocal admissions made in the pleadings. However, by amendment to Order VI Rule 17 of CPC, an interdict is created to allow such amendments 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. In view of the proviso, it is for the petitioners to satisfy the Court that they exercised due diligence but could not take steps to raise such plea before commencement of trial in the suit before the trial Court. Allowing amendments prior to commencement of trial is a matter of routine. The petitioners, who seek permission to amend the plaint after commencement of trial, have to establish that despite due diligence, they could not raise such plea.

27. In the present case, the reason assigned by the petitioner (respondent therein) is that the relief of recovery of possession is higher than the relief of declaration of title and therefore, the respondent herein (Petitioner therein) could not seek the relief of declaration of title.

28. Whereas, learned counsel for the revision petitioners contended that a specific contention was raised in the written statement that the suit for recovery of possession without seeking declaration of title is not maintainable. Despite it, the petitioner/respondent herein did not take steps to amend the plaint.

29. The schedule property is a residential plot and construction was raised therein. In that view of the matter, the question to be decided by this Court is not due diligence since the plaint was registered prior to commencement of amended provisions of CPC, i.e., proviso to Order VI Rule 17 of C.P.C.

30. In ***Ramesh Kumar Agarwal Vs Rajmala Exports Private Limited and others*** ^[14], ***Revajeetu Builders's referred supra***, the Apex Court 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 (to) (sic) 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 Court (sic commenced) despite exercising due diligence, the Court can allow such amendment. The factum of exercising due diligence depends upon circumstances.

10. Learned counsel for the petitioners placed reliance on Rajesh Kumar Aggarwal and others V K.K.Modi and others (4th supra), 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.”

11. *Learned counsel for the petitioners also placed reliance on Delhi Development Authority V S.S.Aggarwal and others (1st supra) and Chander Kanta Bansal V Rajinder Singh Anand (2nd supra). 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.*

12. *Learned counsel for the petitioners further placed reliance on Bairam Susheela V Pendota Rama Rajaiah (6th supra), 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 (5th supra), 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.”

13. *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.

14. *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 Revajetu Builders and Developers V.Narayanaswamy & Sons and others (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.

15. *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, (8th supra), 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.”

16. *Learned counsel for the 1st respondent also placed reliance on Jagajeevan Panigrahi and others Vs Gelala*

Somayya (9th supra), 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.

17. *No doubt the proposed amendment may change nature of the suit to some extent. However, the intention of the legislature in permitting amendments is to shorten the litigation and to avoid multiplicity of proceedings. If such conversion is not permitted, certainly the parties have to again approach Court by filing suit for recovery of possession and it will be delayed for another decade or so. If that principle is applied, it is difficult for any party to amend their pleadings.”*

31. No doubt the respondent herein filed suit for recovery of possession after removing the constructions raised in the schedule property. At the earliest point of time i.e., before framing issues, the revision petitioners (defendants in the suit) raised a specific contention that the suit for recovery of possession is not maintainable without seeking relief of declaration of title. Based on the said pleadings, the trial Court framed an issue regarding maintainability of the suit. But the respondent herein proceeded with the trial without taking steps to amend the plaint incorporating the claim for declaration of title. But when the suit was dismissed and filed an appeal before the VI Additional District Judge, Srikakulam, she woke up and filed petition for amendment at a belated stage. Since the proviso has no application to the suits instituted prior to amendment of CPC, allowing amendment is a matter of routine, as the intention of the legislature and permitting amendment is to shorten the litigation and to avoid multiplicity of proceedings. Though the proposed amendment, if allowed, it would amount to conversion of suit for recovery of possession into suit for declaration of title, which would not change the

nature of the suit and takes away valuable right that accrued to the revision petitioners or that it would take away the unequivocal admissions, made by the respondent herein in the suit. On the other hand, it would shorten the litigation and multiplicity of proceedings can be avoided, if such amendment is permitted. If such conversion is not permitted, certainly, the respondent has to again approach the Court filing a suit for declaration of title and it will be delayed for another decade or so, if such principle is applied, it is difficult for any party to amend the pleadings.

32. Learned counsel for the revision petitioners mainly contended that the amended relief i.e., declaration of title, is barred by limitation and the relief which is barred cannot be permitted to be incorporated by way of amendment and placed reliance on the judgment of the Apex Court in ***L.C.Hanumanthappa's case referred supra***, wherein it was categorically held that

“a suit for declaration or amendment of pleadings to incorporate relief of declaration, limitation period starts when the right to sue is accrued under Article 58 of the Limitation Act, 1963. That would mean that if a suit is based on multiple causes of action the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

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. Thus, amendments 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 ? Thus, Courts will, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of the application. But that is a factor to be taken into account in exercise of the discretion as to whether amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interests of justice. There may be an exceptional class of cases where despite the fact that a legal right had accrued to the defendant by lapse of time, yet this consideration is outweighed by the special circumstances of the case, for example, that no new material fact needed to be added at all, and only an alternative prayer in law had necessarily to be made in view of the original plea in law being discarded. That however, is not true in the present case.

While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

In the present case, first, in the original written statement itself, which is dated 16.05.1990, the defendant had clearly put the plaintiff on notice that it had denied the plaintiff's title to the suit property. The original written statement read as a whole un-mistakably indicates that the defendant had not accepted the plaintiff's title. Secondly, while allowing the amendment, the High Court in its earlier judgment dated 28.03.2002 had expressly remanded the matter to the trial court, allowing the defendant to raise the plea of limitation.

Article 58 of the Limitation Act, 1963 would apply to the amended plaint inasmuch as it sought to add the relief of declaration of title to the already existing relief for grant of permanent injunction. There can be no doubt that the right to sue for declaration of title first arose on the facts of the present case on 16.05.1990 when the original written statement clearly denied the plaintiff's title by 16.05.1993 therefore, a suit based on declaration of title would have become time-barred. Thus, the

present amendment of the plaint is indeed time-barred. As regards the applicability of doctrine of relation back to the present amendment, the said doctrine would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, there is no infirmity in the impugned judgment of the High Court.”

33. In ***Munilal Vs The Oriental Fire & General Insurance Company Ltd., and another***^[15] parties can't be permitted to amend plaint after suit was barred by limitation during pendency of proceedings.

34. In view of the principle laid down in the above judgment, the time barred claims cannot be allowed to incorporate new relief by filing petition under Order VI Rule 17 of CPC, to amend the pleadings. If the principle laid down in the above judgment is applied certainly, the respondent's claim cannot be accepted.

35. Whereas, learned counsel for the respondent herein, contended that the amendment cannot be declined on the ground of limitation and placed reliance on the judgment of this Court in ***Nimmaraju Samba Sadasiva Sarma's case*** referred supra, wherein this Court held that

4. “ *On the contrary, Sri K.B.R.Krishna Murthy, learned counsel for the respondents submits that no amendment so as to include a claim barred by limitation could be allowed. He relies on a decision of the Supreme Court in Muni Lal Vs Oriental Fire & General Insurance Co., Ltd. [(1996) 1 SCC 90] In the said case, the Supreme Court was considering the question whether an application for amendment can be ordered when the relief sought for stood barred by limitation by the date of the application for amendment. In that case, the suit was filed for a declaration that the plaintiff is entitled to the loss of truck from the Insurance Company although under Section 34 of the Specific Relief Act, the plaintiff is entitled to ask for consequential relief for payment of quantified amount, but at a belated stage an application for amendment seeking consequential relief was filed. The Supreme*

Court finding that by the date of application for amendment, the relief was barred by limitation, observed.

“On a consideration of this case in its proper perspective, we are of the view that granting of amendment of plaint seeking to introduce alternative relief of mandatory injunction for payment of specified amount is bad in law. The alternative relief was available to be asked for when the suit was filed but not made. He cannot be permitted to amend the plaint after the suit was barred by limitation during the pendency of the proceeding in the appellate Court or the second appellate Court. Considered from this perspective, we are of the opinion that the District Court and the High Court were right in refusing the prayer of amendment of the suit and the Courts below had not committed any error of law warranting interference.”

5. *“Normally amendment should be allowed which satisfy the twin conditions viz., not working out injustice to the other side and being necessary for purpose of determining the real controversy between the parties. By allowing an amendment of a plea which is otherwise barred by time would have the effect of divesting the right already accrued to the other party. In Leach & Co. Ltd. Vs M/s.Jardine Skinner & Co. [AIR 1957 SC 357]; the Supreme Court has clearly indicated that Courts as a rule would decline to allow amendments if a fresh suit on the amended claim would be barred by time on the date of the application. However, the Supreme Court has expressed that the Court has got power under Order 6, Rule 17 C.P.C. to order amendment of pleadings covering barred claims if that is essential in the interest of justice. Therefore, except in exceptional cases Court shall not exercise jurisdiction permitting amendments relating to barred claims. The recent decision of the Supreme Court in Muni Lal Vs Oriental Fire & General Insurance Co., Ltd., further reaffirmed the same view. Of course, Sri P.V.R.Sarma, the learned counsel for the appellant as already stated, submits that he could not file the application for amendment till he lost the appeal in the appellate Court. This argument in my view is putting the cart before the horse. The plaintiff should know what reliefs he should claim and out forth necessary pleadings in his plaint. Having filed the suit for mere injunction asserting that he is in possession on the date of the suit, and finally when the Court comes to the conclusion on the basis of the evidence adduced by both parties that the plaintiff has failed to establish possession, he cannot say that he realized this defect only after the disposal of the suit. Therefore, the plaintiff who failed to seek declaration of title cannot be heard to say that he waited to seek this relief till his suit for bare injunction*

is disposed of. If this contention is accepted, the unsuccessful plaintiff would have an extended period of limitation as not provided under the Act. Therefore, this submission in my view has no force. I may also point out that in second appeals the High Court being bound by finding of fact recorded by the lower appellate Court cannot permit additional evidence. If the proposed amendment is accepted, the appellant will have to be permitted to adduce evidence on question of fact which is impermissible for the second appellate Court. For all these reasons, the amendment sought for cannot be allowed as it would deny the right of the respondents to plead that this relief would be barred by time, if the appellants were to file a fresh suit.”

36. In another judgment of this Court in ***V. Bali Reddy’s case referred supra*** the single judge of this Court held that amendment petition was allowed in the interests of justice, though barred by limitation. In ***K. Chinna Biddamma’s case referred supra*** in Para 5 of the judgment this Court held that amendment of plaint can be allowed though claim is barred by limitation, if such amendment is necessary in the interests of justice.

37. In a judgment reported in ***Mount Mary Enterprises Vs Jivratna Medi Treat Private Limited***^[16] the Apex Court laid down certain guidelines for allowing the petition filed under Order VI Rule 17 of CPC, but the principle laid down in the above judgment has no application for the reason that the plaintiff in the above judgment wanted to rectify the value of the suit and such amendment can be allowed.

38. In any view of the matter it is clear from the judgment of the Apex Court in ***L.C.Hanumanthappa’s case referred supra***, when the suit claim is barred by limitation, the same cannot be incorporated by way of amendment. But the High Courts have taken a different view contrary to the view taken by the Apex Court. In such case, the principle laid down by the Apex Court is binding precedent on this Court and by following the same, the amendment petition cannot be

allowed for the reason that the revision petitioners filed written statement in the year 2003 itself raising a specific contention that the plaintiff is not entitled to claim any right without recovery of possession of property and raised a contention that the suit without seeking the relief of declaration, suit is not maintainable. The trial Court also framed additional issue on 03.08.2012 which is as follows :

Whether the suit is maintainable for possession and mandatory injunction without seeking the relief of declaration of title ?

39. Therefore, the right to sue is accrued first on the day when the written statement was filed by the defendants/revision petitioners before the trial Court, while setting up title. But no steps have been taken to amend the plaint and filed a petition in I.A.No.539 of 2015 on 02.12.2015 seeking amendment to the plaint but by the date of filing petition under Order VI Rule 17 of CPC, the claim for declaration of title is barred by limitation. Therefore, *prima facie*, on this ground alone the amendment cannot be allowed by applying the principles laid down in the judgment of ***L.C. Hanumanthappa's case referred supra***.

40. Learned counsel for the respondent herein though contended that delay in filing petition is not a ground by placing reliance on several judgments, but the question of delay need not be examined as the claim of declaration of title by way of amendment is barred by limitation ex-facie by the date of filing of the petition, as the written statement was filed before the trial Court by the defendants in the year 2003 denying title of the plaintiff/respondent setting up title to property by the revision petitioners/defendants. Hence, the exercise of discretion by the appellate Court without considering the law declared by the Apex Court and allowing amendment contrary to the principles laid down by the Apex Court, is an error apparent on the face of record and the appellate Court exercised its discretion which is not vested on it.

41. In view of my foregoing discussion, I hold that the proviso

to Order VI Rule 17 of CPC, is not applicable to suits instituted prior to 01.07.2002 and that the claims barred by limitation cannot be permitted to be incorporated by way of amendment to plaint, but the appellate Court passed creptic order without advertng to any of the contentions urged before it. Hence, the order passed by appellate Court in I.A.No.539 of 2015 in A.S.No.98 of 2014 dated 30.12.2015 is liable to be set aside. Accordingly points are answered in favour of revisions petitioners and against the respondent.

42. In the result, the Civil Revision Petition is allowed setting aside the order dated 30.12.2015 in I.A.No.539 of 2015 in A.S.No.98 of 2014 passed by VI Additional District & Sessions Judge, Sompeta. No costs.

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

**M.
SATYANARAYANA MURTHY, J**

1st August, 2016.
Rds

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- [\[1\]](#) (2016) 1 SCC 332
 - [\[2\]](#) 2004(2) ALD 290
 - [\[3\]](#) 2005(2) ALD 40
 - [\[4\]](#) AIR 1957 SC 357(1)
 - [\[5\]](#) 1996(3) ALT 521
 - [\[6\]](#) 1997(2) ALD 149
 - [\[7\]](#) 1997(1) ALT 147
 - [\[8\]](#) 1999(2) ALT 173
 - [\[9\]](#) 2001(1) ALT 342
 - [\[10\]](#) (2009) 10 SCC 84
 - [\[11\]](#) 2013(1) ALD 1 (SC)
 - [\[12\]](#) 2015 (1) ALT 113
 - [\[13\]](#) 2015 (5) ALT 184
 - [\[14\]](#) 2012(4) ALT 1 (SC)

[\[15\]](#) AIR 1996 SC 642

[\[16\]](#) (2015) 4 Supreme Court cases 182