

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

CIVIL REVISION PETITION No. 3295 OF 2016

Between :

Kalastri Haribabu S/o late Venkateshwarlu
R/o Gunturpally village, Sangem mandal
Warangal district

Petitioner

And

Avunuri Raju S/o not known to the petitioners
R/o Urus, Kareemabad, Warangal and others

Respondents

JUDGMENT PRONOUNCED ON :19.12.2016

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

1. Whether Reporters of Local Newspapers may : YES
Be allowed to see the Judgments ? :
2. Whether the copies of judgment may be marked : YES
To Law Reporters/Journals :
3. Whether Their Ladyship/Lordship wish to : YES
See fair Copy of the Judgment ? :

***THE HONOURABLE SRI JUSTICE P.NAVEEN RAO**

+ CIVIL REVISION PETITION No. 3295 OF 2016

% 19.12.2016

Kalastri Haribabu S/o late Venkateshwarlu
R/o Gunturpally village, Sangem mandal
Warangal district

....petitioner

Vs.

\$ Avunuri Raju S/o not known to the petitioners
R/o Urus, Kareemabad, Warangal and others

.... Respondents

!Counsel for the petitioner : Sri A. Prabhakar Rao

Counsel for the Respondents: Sri J.Venkateshwar Reddy

<Gist :

>Head Note:

? Cases referred:

(2005) 13 SCC 89
2015 (2) ALT 697
2015 (3) ALT 508.
(2009) 10 SCC 84
(2012) 5 SCC 337
(2014) 4 SCC 516
(2015) 10 SCC 203
(2001) 2 Supreme Court Cases 472
2015 (1) LS 201



HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No. 3295 OF 2016

ORAL ORDER:

Heard learned counsel for petitioner Sri A.Prabhakar Rao and learned counsel for respondents Sri J.Venkateswara Reddy.

2. Parties are referred to as arrayed in the suit.

3. Plaintiffs instituted suit in O.S. No. 511 of 2008 on the file of the II Additional Junior Civil Judge, Warangal praying to grant permanent injunction in respect of suit schedule property. The suit schedule property is agricultural land to an extent of 0-30 guntas in Survey No. 200/E, Gadepalli village, Sangem mandal, Warangal district. The schedule appended to the suit describes the boundaries of the property as under:

East	: Land of Kothapalli Janakiramulu
West	: Land of Nanjala Kumaraswamy
North	: Land of Unkanti Ramarao
South	: Main road leading from Warangal to Nekkonda

4. Plaintiffs filed I.A. No. 1461 of 2008 praying to amend the relief sought in the suit and sought for declaration that plaintiffs are owners and possessors of the suit schedule property and to grant decree for permanent injunction restraining the defendants from interference. The said I.A. was allowed by order dated 10.9.2009. Plaintiffs filed I A No. 1878 of 2015 praying to amend the schedule to the plaint with reference to boundaries of the property. In the amended schedule plaintiffs describe the boundaries of the suit schedule property as under:

East	: Land of Kothapalli Janakiramulu
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West : 20 feet wide way leading to Nallakunta village
and thereafter Land of Nanjala Kumaraswamy.
North : Land of Onkanti Ramarao
South : Remaining land admeasuring Ac.0.31 guntas in
Sy.No. 200/E belongs to defendant Nos. 2 and
3 and thereafter main road leading from
Warangal to Nekkonda.

5. In other words, plaintiffs intend to change the description of the boundaries of the suit schedule property on the western side and on the southern side. By the time this application is filed, P.W.1 was examined and marked Exhibits A1 to A11 and he was also partly cross examined by defendants 2 and 3. On elaborate consideration of rival contentions, the trial Court held that the plaintiffs were not diligent in prosecuting their litigation, that if the petition is allowed, it would affect the defense of defendants. The trial Court also noted that the suit was one of the targeted cases and require early disposal and granting of relief as prayed would only delay the disposal of the suit.

6.1 Learned counsel for plaintiffs would submit that the provision in order 6 Rule 17 has to be liberally construed, amendment of the plaint has to be ordered in normal course as it would only avoid multiplicity of litigation and is intended to remove the gaps occurred or error in description of property or defects noted in the plaint and object of the Court should be only to ensure that justice is rendered on true and correct facts.

6.2. The claim of the plaintiffs is that this portion of the property is vested in the plaintiffs and the remaining portion of the property vested in the defendants. Sri Kalahasti Venkateshwarlu and Sri Kalahasti Hanumaiah are brothers. Plaintiffs are sons of Sri Kalahasti Venkateshwarlu. Defendant no.2 is son of Sri K Hanumaiah and

defendant no.3 is daughter in law of Sri K Hanumaiah and wife of defendant no.2. The suit property is part of joint family property of plaintiffs and defendant Nos. 2 and 3. During the life time of father of plaintiffs, father of 2nd defendant partitioned the entire property and during the said partition, the suit property fell to the share of plaintiff's father. Thus, after the death of plaintiffs' father, as legal heirs they succeeded to the said property. While so, illegally defendants 2 and 3 are claiming the entire extent of Ac.1.21 guntas as belonging to them. This being the substantive grievance in the suit and as there is no dispute regarding the total extent of land in Survey No. 200/E, merely because there is wrong description of the boundaries and merely because plaintiffs are now praying to amend the boundaries would not change the cause in the suit or the claim set up by the plaintiffs and opposed by defendants 2 and 3.

6.3. He would submit that what is sought to be changed is only description of existence of road on western side whereas erroneously the existence of road was not mentioned and straight-away the property of Nalajala Kumaraswamy was shown on the western side. Similarly, though on the southern side, the remaining land of Ac.0.31 guntas in Survey NO. 200/E exists, by mistake adjoining road leading from Warangal to Nekonda was mentioned. In other words, according to plaintiffs on the Southern side, the remaining land belonging to defendants 2 and 3 exists and the land claimed by plaintiffs is not abutting the road. Whereas, on the Western side, the land claimed by the plaintiffs is abutting the 20 feet road. He would submit that by altering the description of the suit schedule property, no prejudice would be caused to the defense of defendants 2 and 3.

6.4. In support of his contentions, learned counsel placed reliance on the decisions in **Sajjan Kumar Vs. Ram Kishan¹, Pattan Babu Khan Vs. Thummala Seshi Reddy² and Raparthy Pandu Vs. Raparthy Vajramma and others³.**

7. Sri Venkateshwar Reddy, contended that the amendment now proposed would prejudicially affect the interest of defendants 2 and 3 and seriously hamper their defense. According to learned counsel, it is not permissible to entertain the application for amendment of plaint or suit schedule after the trial commenced. In the instant case, P.W.1 deposed and marked Exhibits A1 to A11. If it was an inadvertent error or by mistake, plaintiffs ought to have realized when they marked Ex. A1 to A11. He would further submit that in the year 2009, when suit was amended also plaintiffs failed to take steps to amend schedule. This shows lack of bonafides in their claim. He submitted that plaintiffs are not prosecuting their claim with due diligence and claim made now is only to protract the litigation and harass the defendants for no fault of them. He further points out that though there are three plaintiffs, the present application is filed only by one plaintiff and in so far as other 2 plaintiffs are concerned, the order of the trial Court made in this I.A. has become final. Therefore for this reason also the claim is not maintainable.

8. Applications filed under Order 6 Rule 17 CPC have become the biggest clot in the disposal of civil cases. This was taken judicial notice by Supreme Court in **Revajeetu Builders and Developers Vs Narayanaswamy and Sons and others⁴.**

¹ (2005) 13 SCC 89

² 2015 (2) ALT 697

³ 2015 (3) ALT 508.

⁴ (2009) 10 SCC 84

9. Supreme Court extensively reviewed the evolution of law on the subject over several decades. Supreme Court observed:

“29. We are tracing the legislative history, objects and reasons for incorporating Order VI Rule 17 not because it is necessary to dispose of this case, but a large number of applications under Order VI Rule 17 are filed and our courts are flooded with such cases. Indiscriminate filing of applications of amendments is one of the main causes of delay in disposal of civil cases. In our view, clear guideline may help disposing off these applications satisfactorily.

.....

31. In our considered view, Order VI Rule 17 is one of the important provisions of the CPC, but we have no hesitation in also observing that this is one of the most misused provision of the Code for dragging the proceedings indefinitely, particularly in the Indian courts which are otherwise heavily overburdened with the pending cases. All Civil Courts ordinarily have a long list of cases, therefore, the Courts are compelled to grant long dates which causes delay in disposal of the cases. The applications for amendment lead to further delay in disposal of the cases.

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33. In a recently published unique, unusual and extremely informative book "**Justice, Courts and Delays**", the author Arun Mohan, a Senior Advocate of the High Court of Delhi and of this Court, from his vast experience as a Civil Lawyer observed that 80% applications under Rule VI Order 17 are filed with the sole objective of delaying the proceedings, whereas 15% application are filed because of lackadaisical approach in the first instance, and 5% applications are those where there is actual need of amendment. His experience further revealed that out of these 100 applications, 95 applications are allowed and only 5 (even may be less) are rejected. According to him, a need for amendment of pleading should arise in a few cases, and if proper rules with regard to pleadings are put into place, it would be only in rare cases. Therefore, for allowing amendment, it is not just costs, but the delays caused thereby, benefit of such delays, the additional costs which had to be incurred by the victim of the amendment. The Court must scientifically evaluate the reasons, purpose and effect of the amendment and all these factors must be taken into consideration while awarding the costs.”

9.2. Supreme Court delineated the principles for consideration of such applications. Paragraphs 63 and 64 read as under:

“FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

63. 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 only illustrative and not exhaustive.

64. The decision on an application made under Order VI Rule 17 is a very serious judicial exercise and the said exercise should never be undertaken in a casual manner. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

9.3. Even when such applications are filed, the Supreme Court emphasized the need to impose costs. Paragraphs 61 and 62 read as under:

“COSTS:

61. 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. In our view, the following parameters must be taken into consideration while imposing the costs. These factors are illustrative in nature and not exhaustive.

(i) At what stage the amendment was sought?

(ii) While imposing the costs, it should be taken into consideration whether the amendment has been sought at a pre-trial or post-trial stage;

(iii) The financial benefit derived by one party at the cost of other party should be properly calculated in terms of money and the costs be awarded accordingly.

(iv) The imposition of costs should not be symbolic but realistic;

(v) The delay and inconvenience caused to the opposite side must be clearly evaluated in terms of additional and extra court hearings compelling the opposite party to bear the extra costs.

(vi) In case of appeal to higher courts, the victim of amendment is compelled to bear considerable additional costs.

All these aspects must be carefully taken into consideration while awarding the costs.

62. The purpose of imposing costs is to:

a) Discourage malafide amendments designed to delay the legal proceedings;

b) Compensate the other party for the delay and the inconvenience caused;

c) Compensate the other party for avoidable expenses on the litigation which had to be incurred by opposite party for opposing the amendment; and

d) To send a clear message that the parties have to be careful while drafting the original pleadings.

9.4 The parameters for consideration of application filed under Order 6 Rule 17 as laid down in **Revajeetu Builders and Developers** are approved in **Rameshkumar Agarwal v. Rajmala Exports (P) Ltd.**⁵, **Voltas Ltd. v. Rolta India Ltd**⁶ and **Ram Niranjana Kajaria v. Sheo Prakash Kajaria**⁷.

9.5. In **Rameshkumar Agarwal**, while referring to the principle laid down by the Supreme Court in **Revajeetu Builders and Developers** in para 63, Supreme Court held as under:

⁵ (2012) 5 SCC 337

⁶ (2014) 4 SCC 516

⁷ (2015) 10 SCC 203

“21. 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 6 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 hypertechnical 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.”

9.6. In **Sajjan Kumar**, facts are as under:

The plaintiff-appellant is admittedly owner-cum-landlord of the suit property. He filed a suit for eviction against the respondent tenant. The proceedings in the suit were at a final stage when the plaintiff-appellant moved an application for amendment of the plaint. The proposed amendment sought the correction of the description of the suit premises in the plaint. It was alleged by the plaintiff-appellant that the description of the property given in the rent note itself was incorrect and the same description was repeated in the plaint and there would be complications at the stage of execution.

9.7. Supreme Court held,

“5. Having heard the learned counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. ***It is true that the plaintiff-appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution***

in the event of the plaintiff-appellant succeeding in the suit.”

9.8. In **Ragu Thilak D.John Vs S. Rayappan and others**⁸, the Supreme Court held that technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties.

9.9. In **Raparthi Pandu** also issue was amendment of plaint. This Court held:

“7. As per the provisions of Order 6 Rule 17 of C.P.C., the courts are authorised to permit the parties to the litigation to alter or amend the pleadings. The said provisions of law also obligate the courts to allow the amendments, which would be necessary and essential for the purpose of determining or resolving the real questions in controversy between the parties. ***It is a settled law that the procedural aspects are handmaid of justice and are intended for advancement of justice and not to penalise the parties. Though the amendment cannot be claimed as a matter of right, in view of the language employed, the approach of the Courts is required to be liberal but not hyper technical. The provisions of Order 6 Rule 17 C.P.C are meant and intended for promoting the ends of justice and not for defeating the same.*** The object of Rule 17 of Order 6 is that the Courts should try the merits of the cases that come before them and allow all amendments which would be essential for determining the real questions in controversy between the parties, provided the same do not cause injustice or prejudice to the other side.”

9.10 In **Pattan Babu Khan**, petitioner was praying to amend the schedule. On elaborate consideration of the issue and on reviewing the precedent decisions, this court expressed similar view as expressed in **Raparthi Pandu**. This Court held that such claim should be allowed.

9.11. In **P Durga Reddy Vs B.Yadi Reddy**⁹ this Court held as under:

“9. The law succinctly laid down from the expressions is that the requirement of satisfying the due diligence concept for the trial once commenced and in particular for post trial amendment is a mandatory requirement being a pre-requisite, besides the other considerations, where the amendment is

⁸ (2001) 2 Supreme Court Cases 472

⁹ 2015 (1) LS 201

necessary to resolve the real controversy and where does not cause grave prejudice or injustice to the other side and where it does not alter the cause of action or inconsistent to the existing material in the pleadings on record. It can be allowed where the amendment is necessary to explain the material on record.”

10. Defective pleadings are generally curable, if the cause of action sought to be brought out was not abinitio completely absent [**Ganesh Trading Company Vs. Moji Ram-(1978) 2 SCC 91**]. Rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting malafide or that by his blunder, he would cause injury to his opponent which may not be compensated for by an order of costs. However, negligent or careless may have been the first omission and however late the proposed amendment, the amendment may be allowed if it can be made without injustice to the other side {**Jai Jai Ram Manohar Lal Vs. National Building Material Supply (1969) 1 SCC 869**]. While deciding prayers for amendment, Courts should not adopt hyper-technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties- Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation. [**B.K.Narayana Pillai Vs Parameswaran Pillai (2000) 1 SCC 712**]

11. In the instant case, when the suit was instituted, plaintiffs sought bare injunction. The prayer in the suit was amended in the year 2009. However, simultaneously they did seek amendment of suit schedule. However, the claim of plaintiffs is that entire extent of Ac.1.21 in Survey

No. 200/E, Gadepalli village, Sangem mandal, Warangal district is joint family property and out of this Ac.0.30 has fallen to their share. Thus, prima facie, the issue for consideration in the suit is whether the subject property is a joint family property and whether the claim of plaintiffs that the suit schedule property has fallen to their share is valid. Thus, it is not a case of boundary dispute. It cannot be said the prayer for amendment is not bonafide. I am of the considered opinion that such amendment is necessary for effective adjudication. In the facts of this case, it cannot be said that petitioner has not exercised due diligence. There is no change in the relief sought and the amendment does not introduce a new case. It only seeks to rectify the description of boundaries of the suit schedule property. Having regard to the controversy in the suit, it cannot be said that by allowing the amendment of plaint schedule the defense of defendants would adversely affect. The amendment does not cause grave prejudice or injustice to defendants. If schedule is not amended, in case plaintiffs succeed, they may face difficulties while enforcing the decree, if the description of property do not match with the possession on ground and may lead to more complications and avoidable litigation, even inter parties. It may cause more injustice. In matters of this nature liberal approach should be adopted by the Courts, within the four corners of long evolved principles delineated above.

12. However, as plaintiffs did not take due care while instituting the suit and while seeking amendment of the prayer in the suit and the suit is of the year 2008, they shall have to be visited with exemplary costs, even while granting the relief to them. Due to their negligence also disposal of suit is delayed and defendants are subjected to hardship. Stark reality is the Courts are burdened with high pendency and there is need to streamline the litigation and reduce pendency. The litigants

must also be disciplined. Avoidable delays must be viewed seriously. In the facts of this case, while granting relief to plaintiffs, they are burdened with costs of Rs.15,000/- (Rupees fifteen thousand only) to be paid to defendants within two weeks from the date of receipt of copy of this order and a memo shall be filed as proof of such payment in the trial Court. It is needless to mention that in default of payment of costs, the order against which this revision is filed stands revived automatically.

13. Subject to above, _I.A. No. 1878 of 2015 is allowed and this revision is accordingly disposed of. It is made clear that there is no expression of opinion on merits of the rival contentions in the suit. No costs. Miscellaneous Petitions, if any pending, stands disposed of.

DATE:19.12.2016
TVK

Note: Mark L R Copy-- YES

P NAVEEN RAO,J



HONOURABLE SRI JUSTICE P. NAVEEN RAO



CIVIL REVISION PETITION No. 3295 OF 2016

Date :19.12.2016