

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA
PRADESH**

CIVIL REVISION PETITION No.635 of 2016

Between:

Prathipati Murlidhararao @ Nehru
.....Petitioner

and

1. Prathipati Venkataratnam Gandhi and others

.....Respondents

Judgment pronounced on : 19-07-2016

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

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|--|--------------|
| 1. Whether Reporters of Local newspapers
may be allowed to see the judgments? | : No |
| 2. Whether the copies of judgment may be marked
to Law Reporters/Journals? | : Yes |
| 3. Whether their Lordship wish to see the fair copy
of the Judgment? | : No |

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.635 of 2016

% 19-07-2016

#Prathipati Murlidhararao @ Nehru

Petitioner.

Versus

\$1. Prathipati Venakataratnam Gandhi and others
Respondents.

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> HEAD NOTE:

!Counsel for the petitioner : Sri Dasaka Murali
Krishna

^ Counsel for the 1st respondent : Sri S.Subba
Reddy

? Cases referred

1. 2006(4) ALT 27
2. (2009) 2 SCC 562
3. AIR 1986 AP 267
4. (1989) 4 SCC 671

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.635 of 2016

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ORDER:

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This Revision is filed challenging the order dt.12-11-2015 in I.A.No.164 of 2015 in O.S.No.192 of 2008 of the Senior Civil Judge, Tadepalligudem.

2. The petitioner in this Revision is the 2nd defendant in the suit.

3. The said suit was filed by 1st respondent for partition

of the plaint schedule properties, future profits and costs.

4. In the plaint, the 1st respondent/plaintiff stated that the 2nd respondent/1st defendant inherited his father's properties in 1948 or thereafter; this comprised Ac.7.00 of land, tiled house bearing Door No.7-84 and another Ac.0.69 cents of land. He also stated that with the ancestral nucleus, the 1st defendant acquired one tiled house and another titled house where there is a school. In the plaint schedule, however, he showed only Ac.0.69 cents in item Nos.1 and 2 and one tiled house but not the tiled house where there is a school. He admitted that his wife was working as an employee and Correspondent of Vivekananda Aided School.

5. In the Writ Statement filed by petitioner/2nd defendant, a specific plea was taken by petitioner that M/s.Vivekananda Aided Elementary Committee school is a proper and necessary party to the suit.

6. After issues were framed, the 1st respondent examined P.W.1 and filed a memo before the trial Court to adduce rebuttal evidence after the evidence of petitioner, if any.

7. At that stage, the petitioner filed I.A.No.164 of 2015 under Order VI Rule 17 and Order I Rule 10 C.P.C.to add

M/s.Vivekananda Aided Elementary School Committee and also an extent of Ac.0.08 cents in Kothavaram village containing a tiled house bearing Door No.8-19 where the proposed party was running Vivekananda Aided Elementary Committee School.

8. In the affidavit filed in support of the said application, he referred to a legal notice Ex.A-6 dt.15-08-2008 got issued by 1st respondent wherein the 1st respondent/plaintiff admitted that the 2nd respondent had acquired another titled house where there is a school. He also alleged that the 1st respondent in his cross-examination refused to add the proposed party in spite of admitting in the plaint that in the tiled house there is a school. He also stated that 1st respondent's wife was acting as Correspondent of the School, which is being run by the joint family funds.

9. Counter-affidavit is filed by 1st respondent contending that Vivekananda Aided Elementary Committee School is not a joint family property; that it is a Society constituted under the Societies Registration Act; therefore the petitioner and other defendants have to work out their rights in respect of the assets of the said school in appropriate proceedings and the said assets cannot be made the subject matter of the suit.

10. By order dt.12-11-2015, I.A.No.164 of 2015 was dismissed by the Court below. It observed that the petitioner, who is 2nd defendant in the suit, cannot compel the 1st respondent/plaintiff to implead the school or to amend the plaint schedule. It placed reliance on the judgment in **Chilakani Venkata Rao Vs. Ch.Lakshman Rao and others**^[1]. It was further held that the proviso to Order VI Rule 17 C.P.C. created an embargo to amend the plaint once the trial has commenced.

11. Challenging the same, this Revision is filed.

12. Heard Sri D.Murali Krishna, learned counsel for petitioner and Sri S.Subba Reddy, learned counsel for 1st respondent.

13. Learned counsel for petitioner contended that the order of the Court below cannot be sustained since the 1st respondent/plaintiff himself had admitted in the plaint that out of the joint family funds, the 2nd respondent/1st defendant had acquired a tiled house where there is a school; that in the light of the said admission, the 1st respondent should have shown not only the Committee which ran the school as a party in the suit, but he should also include the property where the School is located in the plaint schedule. According to him, since a suit for partial

partition is not maintainable, if the plaint schedule is not amended and the property where the school is located is not included, the suit filed by

1st respondent itself would have to be dismissed. Therefore not only would no prejudice be caused to the 1st respondent by inclusion of this item containing a school in the plaint schedule, but also the

1st respondent would not have to suffer dismissal of the suit on the ground that he had filed a suit for partial partition. He contended that the proviso to Order VI Rule 17 C.P.C. would not come in the way, since the evidence of P.W.1 is not yet complete and the 1st respondent's memo before the Court below to adduce rebuttal evidence after the petitioner gives evidence has been accepted by the Court below. He further contended that in a suit for partition, all parties who have a share in the properties to be partitioned would be in the position of plaintiffs and the written statements would also be in the nature of plaints, and therefore an application for amendment of the plaint schedule or impleadment of the School Committee could not have been rejected by the Court below.

14. Learned counsel for 1st respondent, however, supported the order passed by the Court below. He contended that although in a suit for partition all the parties would be in the position of plaintiffs, if any properties have

been left out by plaintiff, the defendants should mention them in the written statement and if defendants have not done so, they should seek leave of the Court to amend the written statement for inclusion of the properties left out by plaintiffs and they cannot seek leave to amend the plaint by inclusion of property in the plaint schedule, particularly since the plaint contains the case of plaintiffs but not that of the defendants. He relied upon the judgment in **Chilakani Venkata Rao** (1 supra).

15. I have noted the submissions of both sides.

16. In **Chilakani Venkata Rao** (1 supra), cited by the respondent, the defendant in a partition suit filed an application to amend the plaint to include certain properties alienated to a third party pending suit. The said application was dismissed on the ground that the defendant in the suit cannot seek amendment of the plaint. This was questioned in Revision before this Court and this Court held that if any property had been left out by plaintiff, the defendant should mention this fact in the written statement and then seek leave of the Court to amend the written statement to include the property left out by plaintiff. This Court held that the defendant cannot amend the plaint since the plaint is the case of plaintiff and not that of the defendant.

17. In **S. Satnam Singh and Others Vs. Surender Kaur**

and another^[2], a question arose whether a property can be added in the list of properties at the instance of a defendant after a preliminary decree is passed in a partition suit. In the written statement filed in that suit, a plea was raised that the plaintiff had failed to render true and proper account of the business of M/s.Bombay Cycle Company though he was specifically called upon to do so by defendant. After trial, the suit was decreed without the share of the properties in the said M/s.Bombay Cycle Company being divided. Thereafter an application was filed by defendant under Order XX Rule 18 r/w Section 152 C.P.C. with regard to the share of the properties in the said M/s.Bombay Cycle Company. This was objected by the Decree Holders. The trial Court allowed the application on the ground that in order to shorten the litigation instead of driving the parties to a separate action, the share of the properties in the said M/s.Bombay Cycle Company can also be decided in the same suit. But the High Court, in the Revision filed by plaintiff/Decree Holder, set aside the said order of the trial Court on the ground that no steps were taken to seek partition of this property during pendency of the case in the trial Court and that additional properties cannot be added for partition in the preliminary decree after the preliminary decree had attained finality in terms of Section 97 C.P.C. The Supreme Court reversed the decision of the High Court. It observed that the principle is

that ordinarily a party should not be prejudiced by an act of Court; in a partition suit where both the parties want partition, a defendant may also be held to be a plaintiff; ordinarily, a suit for partial partition may not be entertained; and when the parties have brought on record by way of pleadings and/or other material that apart from the property mentioned by the plaintiff in his plaint, there are other properties which could be a subject-matter of a partition, the Court would be entitled to pass a decree even in relation thereto. It observed that Section 97 of C.P.C. is not a bar to file an application for amendment of preliminary decree. It observed that if a property was subject-matter of the pleadings and the Court did not frame an issue which it ought to have done, it can, at a later stage, when pointed out, amend the decree. It based this view on the principle that a Court shall always be ready and willing to rectify the mistake it has committed.

18. Similar view has been expressed in **Syed Ikramuddin Vs. Syed Mahamed Ali**^[3].

19. In view of the above decisions, it is clear that even if a preliminary decree has been passed in a partition suit, it is open to the defendant to seek inclusion of the property in the schedule of the preliminary decree in the suit particularly when the parties have brought on record by way of pleadings and/or other material that apart from the

property mentioned by plaintiff in the plaint, there are other properties which could be a subject-matter of partition, for otherwise the suit for partial partition would not ordinarily be entertained.

20. If this is so, then if the omission of the plaintiff to include the property admitted by him in the plaint as having been purchased with the ancestral nucleus, is brought to the notice of the Court by the defendant even before preliminary decree is passed, the Court cannot take hyper-technical view of the matter and hold that the defendant should have mentioned this property in his written statement and seek leave of the Court to amend the written statement and he cannot seek amendment of the plaint. If such a view is accepted, the suit would have to be dismissed on the ground that the suit for partial partition cannot be maintained since on the admission of 1st respondent/plaintiff in the present case, he had not included the tiled house where there is a school which was also acquired from the ancestral nucleus in the plaint schedule. Therefore I am of the opinion that amending the plaint would enure to the benefit of 1st respondent/plaintiff himself if the plaint is amended and the property where the school is located is included in the plaint schedule. The Court can then frame an issue whether this property is also liable for partition and decide it.

21. It is settled law that procedure is but a hand maid of justice and substantive justice cannot be denied on the basis of a procedural impediment. This was emphasized in several cases by the Supreme Court. One such case is

M.V. “Vali Pero” v. Fernando Lopez ^[4], where the Court

held:

“Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice. Where the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach which needs to be adopted while construing a purely procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the handmaid of justice, contrary to the role attributed to it in our legal system.”

22. Coming to the proviso to Order VI Rule 17 C.P.C., having regard to the fact that rejecting the application for amendment and adding of the property where the school is located would ultimately result in the dismissal of the suit itself, and since the 1st respondent himself ought to have filed an application for amendment seeking inclusion of this

property in the plaint, and since the evidence of P.W.1 has not concluded, the proviso to Order VI Rule 17 C.P.C. does not come in the way of the application for amendment to be allowed, in the facts and circumstances of the case.

23. Once the plaint is amended and the property where the school is located is included in the plaint schedule, if the Society running the school by name M/s.Vivekananda Aided Elementary School Committee is not added, grave prejudice would be caused to the said Committee in the event of the property where the school is located being ultimately decreed to be partitioned in the preliminary decree by the Court below. Therefore I am of the view that the said Committee is also a necessary party to the suit and the Court below erred in refusing to implead the said Committee in the suit as 7th respondent

24. Therefore the Civil Revision Petition is allowed. The impugned order is set aside and I.A.No.164 of 2015 in O.S.No.192 of 2008 on the file of the Senior Civil Judge, Tadepalligudem, West Godvari District is allowed. No costs.

25. As a sequel, miscellaneous petitions pending if any, in this Civil Revision Petition shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 19-07-2016

Note : Mark the L.R. Copy.

B/o.
VSV

[\[1\]](#) 2006(4) ALT 27
[\[2\]](#) (2009) 2 SCC 562
[\[3\]](#) AIR 1986 AP 267
[\[4\]](#) (1989) 4 SCC 671