

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5156 of 2017

ORDER:

1) Aggrieved by the order dated 21.06.2017 passed in I.A.No.562 of 2017 in O.S.No.257 of 2013 on the file of the Principal Junior Civil Judge, Chittoor, wherein an application filed under Order VI Rule 17 of C.P.C., seeking amendment of the plaint was rejected, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The petitioner, who is the plaintiff, filed O.S.No.257 of 2013 seeking permanent injunction restraining the respondent/defendant from interfering with his peaceful possession and enjoyment over the property. Pending the said suit, the petitioner/plaintiff filed the present I.A. seeking amendment of the plaint. The contents of the affidavit filed in support of the said I.A., state that he is residing away from the suit schedule property leasing out the same to one Das Automobiles. Taking advantage of his absence, the defendants encroached to an extent of 12 feet on the North West corner of the schedule property and constructed a building with a compound wall. The report of the advocate-commissioner clearly reveals the said fact. Hence, seeks amendment of the plaint.

3) A counter came to be filed opposing the same. It is stated in the counter that suppressing the dispute with regard to 3 feet passage, the plaintiff filed the suit for 17 x 90 feet and the

western boundary is shown as house of the defendant. It is stated that on the application made by the defendants, an advocate-commissioner was appointed to note down the physical features. In his report, the advocate-commissioner stated that he visited the schedule property along with the Surveyor, found the defendant's site with measurement of 37.2 feet on northern side and 52.7 feet on southern side, apart from that he found the disputed passage as 2.9 inches and the house of the defendant as 25.6 feet. It is further stated in the counter that the respondent had constructed the house more than 10 years back and he is residing in it. According to him, no explanation is forthcoming as to why the petitioner kept quiet all these years without filing an application seeking amendment of the plaint.

4) After considering the rival submissions made, the trial Court rejected the request of the petitioner. Challenging the same, the present Civil Revision Petition came to be filed.

5) In *Revajeetu Builders and Developers v. Narayanaswamy and sons and others*¹ the Apex Court, after critically analyzing the point in issue, deduced the following basic principles to be taken into consideration by the Courts, while allowing or rejecting the application for amendment:

1. Whether the amendment sought is imperative for proper and effective adjudication of the case.

¹ (2009) 10 SCC 84

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.
- 6) In *P.A. Jayalakshmi v. H. Saradha and others*², while dealing with Order VI Rule 17 of C.P.C. the Apex Court held that it is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI Rule 17 of C.P.C. restricts the power of the Court. It puts an embargo in exercising its jurisdiction. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction to allow the amendment of the plaint.
- 7) In the instant case, no explanation is forth coming as to why the petitioner came to the Court at a belated stage. Apart from that, originally the suit was filed for permanent injunction

² (2009) 14 SCC 525

and now the amendment is for “declaration of title and mandatory injunction”, which alters the nature of the suit itself. However, the petitioner plaintiff sought for amendment of the plaint seeking declaration of right and title and mandatory injunction by adding some more property though he filed the suit for permanent injunction only for one property. As the petition filed by the petitioner changes entire nature of suit, and cause of action, the amendment sought for by the petitioner is not permissible.

8) Having regard to the facts and circumstances of the case and in view of the judgments referred to above, I do not find any illegality or irregularity in the order passed by the trial Court.

9) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

10.11.2017
gkv

