

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4980 of 2015

ORDER:

The unsuccessful plaintiff filed this revision petition, under Article 227 of the Constitution of India, assailing the order, dated 19.08.2015, of the learned Principal Junior Civil Judge, Gudur, passed in IA.no.705 of 2012 in OS.no.249 of 2008 filed by the petitioner-plaintiff under Order VI Rule 17 of the Code of Civil Procedure, 1908, ['the Code', for short] read with Rule 28 of Civil Rules of Practice, requesting for permission to amend the plaint as stated in the petition list.

2. I have heard the submissions of *Ms. C.Avani Reddy*, learned counsel appearing for the revision petitioner-plaintiff, and of *Smt. C.Vani Reddy*, learned counsel appearing for the respondents-defendants. I have perused the material record.

2.1 The parties shall hereinafter be referred to as the plaintiff and defendants for convenience and clarity.

3. The facts, which are required to be stated as a preface to this order, in brief, are as follows:

The plaintiff brought the suit against the defendants seeking the permanent injunction and other reliefs. The defendants are resisting the suit by filing a written statement. During the pendency of suit, the plaintiff filed the afore-stated IA.No.705 of 2012 seeking amendment of the plaint. The 1st defendant resisted the said application by filing a counter. The defendants 2 to 4 adopted the counter filed on behalf of the 1st defendant. On merits and by the orders impugned in this

revision, the trial Court dismissed the said petition. Therefore, the plaintiff is before this Court.

4. Before proceeding further, it is necessary to refer to the pleadings of the parties.

4.1 The case of the plaintiff in support of the request for amendment of the plaint, in brief, is this:

The 1st defendant filed the written statement. The defendants 2 to 4 adopted the written statement of the 1st defendant. The defendants 1 to 3 contended that the father of the plaintiff sold away item no.1 of plaint schedule property to the defendants 1 to 3 under three registered sale deeds, dated 09.02.1987. It is further being contended that the 1st defendant purchased an extent of Ac.0.50 cents of land covered under item no.1 of schedule property under registered sale deed, vide Document no.63/1987; defendant no.2 purchased an extent of Ac.0.50 cents of land in the same survey number under registered sale deed, vide Document no.61/87; and, the third defendant purchased an extent of Ac.0.50 cents of land in the same survey number vide Document no.62/87 and that the said defendants obtained possessions of the said extents respectively purchased by them and as such, the plaintiff has no right over the said item of plaint schedule property and that the alleged Wills said to have been executed by the original owner Venkataiah and his brother Ramanaiah in favour of the plaintiff are fabricated documents. The defendants falsely pleaded that they are in peaceful possession and enjoyment over item no.1 of the plaint schedule property by virtue of the registered sale deeds and that the paternal uncle of the plaintiff, by name N.Ramanaiah, is unmarried; and, he died intestate and that after the intestate death of Ramanaiah,

the property devolved upon his brother, Venkataiah and that after the death of Venkataiah, item no.2 of the plaint schedule property devolved upon the plaintiff and the defendants and as such, the defendants are the coparceners and hence, no injunction can be granted against the defendants in respect of item no.2. Further, the defendants denied the Wills respectively executed, on 10.07.1980 and 22.05.1977, by the father and the paternal uncle of the plaintiff in favour of the plaintiff and they are falsely claiming that they are in possession of the respective extents of the properties since the date of purchase of the said extents out of the plaint schedule property. Though the defendants had taken the false plea that they purchased the property under registered sale deeds in the year 1987 and since then, they are in peaceful possession, they have not filed any revenue records to prove their contentions. Further, the thumb impressions contained in the said registered sale deeds do not belong to the father of the plaintiff. He was an educated person and he used to put his signatures on documents. As such, the said documents are documents obtained by impersonation. No right was transferred to the 1st defendant under the Will executed in the year 1980 by his father M.Venkataiah in respect of item no.1 of the plaint schedule property. The plaintiff is in long standing possession to the knowledge of the defendants and he had perfected his title over the plaint schedule property by way of adverse possession. The revenue records establish the said fact. As such, the defendants lost their title over item no.1 of the plaint schedule property. Though the defendants are falsely claiming coparcenary rights over item no.2 of the plaint schedule property, the 1st defendant was in possession over item no.2 of the plaint schedule property by virtue of the Will executed by his paternal uncle by name Ramanaiah in the year 1977 itself. As such, the

defendants have no manner of right over item no.2 of the plaintiff schedule property. The defendants are denying the title of the plaintiff over item nos. 1 and 2 of the plaintiff schedule properties. In the circumstances stated supra, it has become necessary to amend the plaintiff and seek the relief of declaration of title also. Hence, the plaintiff is constrained to seek amendment of the plaintiff for claiming the relief of declaration of title and permanent injunction. If the amendment sought for is not permitted, the plaintiff would be put to irreparable loss.'

4.2 Per contra, the case of the defendants in the counter affidavit filed on their behalf, by the 1st defendant, in brief, is this:

The material allegations in the affidavit filed in support of the petition of the plaintiff are all false. The allegations that the defendants did not file revenue records to prove their contentions and that the thumb impressions contained in the registered sale deeds of the defendants do not belong to the father and that he was an educated person and that he used to put his signatures on documents and that the sale deeds executed in favour of the defendants 1 to 3 are obtained by impersonation and that the said documents had never seen the light of the day and that the defendants had knowledge of the plaintiff's possession and that the plaintiff is in long standing possession to the knowledge of the defendants and perfected title by adverse possession and that the defendants lost their title over item no.2 of the plaintiff schedule and that the plaintiff is in possession of the item no.2 of the plaintiff schedule by virtue of 'Will' executed by his maternal uncle by name Ramanaiah in the year 1977 itself and that the defendants have no manner of right over item no.2 of the plaintiff schedule are all false allegations and are denied. Item no.1 of the plaintiff schedule was sold to

this defendant and defendants 2 and 3 under registered sale deeds, dated 09.02.1987, vide document nos.61/ 87, 62/ 87, 63/ 87 executed in respect of an extent of Ac.0.50 cents each and possession of the said extents were delivered respectively to the said defendants. Since the date of purchase, the defendants 1 to 3 are enjoying their respective extents to the knowledge of the plaintiff. Hence, the allegation that the plaintiff got item no.1 of the plaint schedule under a Will, dated 10.07.1980, said to have been executed by his father is false. It is also false to state that the plaintiff is in possession over item no.1 since 1987 and that the said possession is adverse possession. These defendants filed suits in O.S nos.61 of 2010, 62 of 2010 and 63 of 2010 on the file of the Court of the learned Principal Junior Civil Judge, Gudur, and got orders of injunction in their favour. Mudumukku Ramanaiah was unmarried and died intestate; and, after his death, item no.2 of the plaint schedule property devolved upon his brother Mudumukku Venkataiah and after his death, item no.2 of the plaint schedule property devolved upon the plaintiff and the defendants 1 to 4. Hence, they became coparceners. The alleged Will said to have been executed by Mudumukku Ramanaiah, on 22.05.1977, is false. It is a forged and fabricated document. Hence, the plaintiff cannot claim exclusive title over item no.2 of the plaint schedule. The 10(1) and number 3 adangals, passbook and title deeds are manipulated documents. Therefore, no credence can be given to the forged and fabricated documents. Hence, the petition may be dismissed.

5. At the hearing, learned counsel for both the sides made submissions in line with the respective pleaded cases of the parties. Learned counsel for the plaintiff contended that the plaintiff only sought amendment of the plaint to enable the plaintiff to convert the suit from

one for simple perpetual injunction to one for declaration of title and that the trial Court erroneously dismissed the petition for amendment of the plaint without properly appreciating the facts and the legal position obtaining and that the trial Court failed to see that merely on the ground of delay, the petition for amendment need not be dismissed and that any amendment of the plaint, which is necessary to avoid multiplicity of litigation and which is essential for effective and complete adjudication of the lis without driving the parties to multiple suits is permissible and therefore, the trial Court ought to have allowed the plaintiff's application for amendment of the plaint. The learned counsel for the defendants supported the orders of the Court below *inter alia* stating that the application for amendment of the plaint is highly belated and that the amendment changes the nature and character of the suit and if allowed, causes prejudice to the case of the defendants.

6. I have given earnest consideration to the facts and submissions.

7. At the outset, it is necessary to refer to the amendments and consequential amendments sought for by the plaintiff. They read as under:

“to add para 4(a) after the para 4: The defendants filed written statement stating that original owner of the item no.1 of the plaint schedule property was sold away to the defendants no 1 to 3 under 3 separate registered sale deeds dt.2-9-1987 and since then they are in peaceful possession and enjoyment over the item no.1 of the plaint schedule property. As such said Venkataiah has no right to execute the will in respect of the item no.1 of the plaint schedule property and no rights and title would be transferred to the plaintiff under the alleged will executed by his father in the year 1980. Further they contended that the will executed by paternal uncle of the petitioner in his favour in the year 1977

is false and they contended that he was died intestate. As such the defendants and petitioner are co-owners. As such the petitioner had no absolute rights over the item no.2 of the plaint schedule property. As such the plaintiff had no right and title over the plaint schedule property. As such no injunction was granted against the defendants. So under the above stated reasons the defendants are denied the title of the plaintiff over the item no.2 of the plaint schedule property also. As such it is casting cloud over title over the plaint schedule properties. On that reason to declare his right, title over the plaint schedule properties, the plaintiff is constrained to seek relief of declaration of his title and interest and possession over the plaint schedule property.

To add para 6(a) after para no.6: The relief of declaration of the right and title of the plaintiffs over the plaint schedule property and permanent injunction for not to disturb the peaceful possession of the plaintiffs from the defendants and their men and agents. The relief of declaration of title and permanent injunction is valued at $\frac{1}{2}$ of the market value of the plaint schedule property of Rs.1,38,000/- and court fee of Rs.3,826/- is paid under Section 24(b) of A.P.C.F and S.V.Act. It is submitted that as already a court fee of Rs.411/- is paid the balance of Rs.3,415/- is paid herewith. Further deleting the existing court fee prayer.

To add the para to the relief para: To declare that the plaintiff is the absolute owner of the plaint schedule property and they are in peaceful possession and enjoyment over the item no.1 of the plaint schedule property by way of adverse possession and Will executed by paternal uncle of the petitioner by name M.Ramanaiah on 22-5-1977 in respect of item no.2 of the plaint schedule property.”

[Reproduced verbatim]

Since by way of the present amendment petition, the plaintiff is seeking to convert the suit for permanent injunction into one for declaration of title, the first aspect to be dealt with is – ‘whether such an amendment of plaint as sought for can be permitted?’. This question need not detain

this Court for long as in *Pankaja v. Yellappa*¹, the Supreme Court while holding that though the plaint is initially filed for permanent injunction there is no bar for permitting the amendment of the plaint to seek the relief of declaration of title in respect of plaint schedule property, had set aside the order of the trial Court rejecting the application seeking for amendment as confirmed by the High Court and had permitted the amendment holding *inter alia* that the question – ‘whether or not the suit seeking the relief of declaration is barred by limitation’ can be gone into in the main suit.

8. Dealing next with delay, be it noted that in *Sampath Kumar v. Ayyakannu*², the facts disclose that the trial Court had rejected the application for amendment of pleadings on the ground of delay and the Madras High Court while dismissing the revision had confirmed the said order of the trial Court. However, the Supreme Court while setting aside the orders of the said two courts and permitting the amendment of the plaint, which was sought for about 11 years from the date of institution of the suit, had held as follows:

In the present case, the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits, it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment.

¹ 2004 (6) SCC 415

² (2002) 7 SCC 559

Therefore, on the ground of mere delay, however long it may be, an application for amendment cannot be rejected provided the facts of the case warrant allowing of the amendment.

9. Dealing finally with the aspect that the relief of declaration of title now being sought to be introduced by way of the proposed amendment is barred by law of limitation and the submission that the period of limitation for seeking declaration of title is 3 years as per the provision of the Article 58 of the Indian Limitation Act, what is to be noted is that issue of limitation is blend of fact and law and is not a pure question of law. In Pankaja's case (1 supra) the Supreme Court had held that the question – 'whether or not the suit seeking the relief of declaration is barred by limitation' can be gone into in the main suit. Further, the learned counsel for the plaintiff brought to the notice of this Court a decision in M.Chokka Rao v. Sattu Sattamma³, wherein this Court having exhaustively dealt with provisions of law under the Indian Limitation Act and the relevant precedents had laid down that when the suit is not for a simple declaration but is for a declaration coupled with further relief, the limitation is 12 years but not 3 years and that Article 58 is not applicable to such suits. While the learned counsel for the defendants pleaded that under Entry 58 of the Schedule to the Limitation Act, the declaration sought for by the plaintiff in this case ought to have been claimed within 3 years when the right to sue first accrued, the plaintiff contends that the same does not fall under the said Entry but falls under Entry 64 or 65 of the said Schedule of the Limitation Act which provides for a limitation of 12 years. Therefore, according to the plaintiff the prayer for declaration of title is not barred by limitation. Be that as it may, as already noted the issue of limitation

³ 2006(1) ALD 16

will have to be gone into by the trial Court at an appropriate stage in the main suit, it being a mixed question of fact and law. Therefore, in the well considered opinion of this Court, on the ground of limitation, the application seeking amendment of the plaint is not liable for rejection as in the case on hand, the trial Court has to consider at an appropriate later stage the aspect whether suit for declaration seeking further relief is governed by Article 58 or Articles 64 and 65 of the Indian Limitation Act.

10. Now, it is necessary to note the proviso to Order VI Rule 17 of the Code, which reads as under:

“Provided 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 the case on hand, it is not the contention of the parties that the adduction of evidence in the suit has already commenced. In *Usha Devi v. Rijwan Ahamd*⁴, a contention was advanced that the trial of the suit would commence with the settlement of the issues; and, in support of the said contention that the framing of issues marked the commencement of the trial of the suit, reliance was placed on the decision in *Ajendraprasadji N.Pandey v. Swami Keshavprakeshdasji* [(2006) 12 SCC1]. However, while meeting the said contention, the attention of the Supreme Court was invited to the decision of the Supreme Court in *Baldev Singh v. Manohar Singh* [(2006)6 SCC 498] wherein it was held as follows:

“Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of

⁴ (2008) 3 Supreme Court Cases 717

pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial Court. That apart, commencement of trial as used in proviso to Order VI Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order VI Rule 17 CPC which confers wide power and unfettered discretion on the Court to allow an amendment of the written statement at any stage of the proceedings.

Further, the Supreme Court having referred to a three-judge Bench decision in *Sajjan Kumar v. Ram Kishan*⁵, had held as follows:

“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

⁵ (2005) 13 SCC 89

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

Thus in Usha Devi’s case (Supra), the Supreme Court, keeping in view of the decision in Sajjan Kumar (supra), held as follows:

“We may clarify here that in this order we do not venture to make any pronouncement on the larger issue as to the stage that would mark the commencement of trial of a suit but we simply find that the appeal in hand is closer on facts to the decision in Sajjan Kumar and following that decision the prayer for amendment in the present appeal should also be allowed.”

In the case on hand also, the trial has not yet commenced and the suit is coming for adduction of evidence. Therefore, in the well considered view of this Court, the facts of the present case are akin to the facts of the cases in the decisions in Usha Devi, Baldev Singh and Sajjan Kumar (supra). Therefore, the contention that the application seeking amendment of the plaint is barred under the proviso to Order VI Rule 17 of the Code is devoid of merit and **needs** no countenance.

In REVAJEETU BUILDERS V/s NARAYANA SWAMY⁶, on an analysis of English and Indian case law, the Supreme Court carved out the following principles which should weigh with the Court while dealing with an 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 bonafide or malafide;
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

⁶ (2009) 10 SCC 84

- (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.

The Supreme Court, however, clarified that the above principles were illustrative and not exhaustive.

Further, in the decision in *Abdul Rehman and Another v. Mohd. Ruldu and Others*⁷, the Supreme Court, having taken note of the above provision of law had laid down that it is clear that the parties to the suit are permitted to bring forward amendment of the pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them and that the Courts have to be liberal in accepting the same, if such application for amendment is made prior to the commencement of the trial and that if such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that, inspite of due diligence, the party could not have raised the matter before the commencement of the trial. In the above decision the Supreme Court reiterated the following proposition:

“All amendments which are necessary for the purpose of determining real questions of controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.”

⁷ 2013(1) ALD 1(SC)

In the above decision the Hon'ble Supreme Court further referred to the ratio in the decision in Pankaja and another v. Yellapa (1 supra), which runs as follows:

“ If the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed.”

11. One of the contentions of the plaintiff is that by virtue of the written statement filed by the defendants, they are claiming title over the plaint schedule property and hence, the plaintiff is constrained to file the petition seeking amendment of the relief from permanent injunction to one of declaration and consequential permanent injunction. Even as per the guidance in the decision of the Supreme Court an amendment can be permitted if it is intended to determine the real question in controversy and that all amendments, which are necessary for the purpose of determining real questions of controversy between the parties, shall be allowed if such amendments sought for do not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of the suit. The power of amendment should be exercised in the larger interests of doing full and complete justice between the parties and that all amendments, which are necessary for the purpose of determining the real question in controversy, should be allowed. Further, if the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed. The Court has also to consider whether the proposed amendment is intended to determine the real dispute between the parties. The law is well settled that 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. Further, as the refusal of the request seeking amendment does not preclude the plaintiff from instituting a fresh suit, the refusal of the request leads to multiplicity of the litigation. In the well-considered view of this Court, if the amendment is permitted, though sought belatedly also helps in avoiding the multiplicity of the proceedings and in setting at rest the dispute between the parties. Be it noted that the law is well settled that the merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. Therefore, for all the aforesaid reasons, granting of amendment of the plaint really sub-serves the ultimate cause of justice and avoids further litigation and therefore, the amendment sought for by the plaintiff deserves to be allowed.

12. Viewed thus, this Court finds that the order of the trial Court which is contrary to the settled legal position, which squarely applies to the facts of the case, is unsustainable both under facts and in law and is liable to be set aside. On a careful consideration of the facts, submissions and the legal position obtaining, this Court is satisfied that the Trial Court is not justified in refusing the amendment of the plaint and that therefore, the impugned order brooks interference.

13. In the result, the Civil Revision Petition is allowed and the order impugned is set aside and IA.no.705 of 2012 in OS.no.249 of 2008 on the file of Principal Junior Civil Court, Gudur, is allowed. The trial Court is now directed to permit the plaintiff to amend the plaint subject to the condition that the plaintiff shall pay the necessary court fee, as per the provisions of the Court Fee and Suits Valuation Act, on the value of the relief now claimed in the suit.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, in this revision shall stand closed.

M. SEETHARAMA MURTI, J

20.12.2017
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