

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 24 of 2017

ORDER:

1) Aggrieved by the order, dated 02.12.2016, passed in I.A.No.507 of 2016 in O.S.No.397 of 2012 on the file of the I Additional Junior Civil Judge, Chittoor, wherein an application filed under Order VI Rule 17 of C.P.C. seeking permission of the Court to amend the plaint was rejected, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India,.

2) The petitioner/plaintiff filed the above suit seeking declaration of title and permanent injunction. In the said suit the evidence of both sides was closed and when the suit was posted for arguments, the petitioner/plaintiff filed I.A.No.507 of 2016 seeking amendment of the plaint on the ground that in the plaint the third defendant name was typed as P.Mumari instead of P.Kumari and the plaintiff was having only Ac.0.30 cents of land out of Ac.1.40 cents in Sy.No.660/ C.

3) A counter came to be filed stating that the averments in the affidavit are invented and created for the purpose of filing the petition. It is also stated that the evidence of the plaintiff was closed long back and when the matter is coming up for arguments, the present petition came to be filed to fill up the lacunas.

4) After considering the rival submissions made, the trial Court dismissed the petition. Challenging the same, the present Civil Revision Petition is filed.

5) Learned counsel for the petitioner would submit that the petitioner is claiming Ac.0.30 cents in Sy.No.660/ C out of Ac.1.40 cents in Sy.No.660 but in the schedule the total extent was mentioned, hence the petitioner intends to amend the schedule.

6) A perusal of the plaint schedule would show that there is a specific mention that there is land to an extent of Ac.1.40 cents in Sy.No.660 and according to pattadar pass book only an extent of Ac.0.30 cents in Sy.No.660/ C is shown. Insofar as the name is concerned, it appears that the corrections have already made since the order passed in I.A. shows the name of the third defendant as P.Kumari. The trial Court categorically held that in the absence of proposed amendment no prejudice would be caused to the petitioner as the same is categorically mentioned in the plaint schedule that in Sy.No.660 the land is to an extent of Ac.1.40 cents and according to pattadar pass book land is to an extent of Ac.0.30 cents and the boundaries were given to the full extent.

7) In *Revajeetu Builders and Developers v. Narayanaswamy and sons and others*¹ the Apex Court, after analysing critically the point in issue, deduced the following basic principles to be

¹ (2009) 10 SCC 84

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.
 - 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.
- 8) 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 primal 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 on exercise of its jurisdiction. Thus, unless the jurisdictional fact, as

² (2009) 14 SCC 525

envisaged therein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint.

9) As per proviso to Order VI Rule 17 of C.P.C., no amendment can be permitted by the Court after the trial has commenced, unless the Court comes to a conclusion that in spite of due diligence the party could not have raised the plea before the commencement of trial.

10) In the instant case no explanation is forth coming as to why the petitioner came to the Court at the belated stage, that too when the suit is posted for arguments. In view of the proviso to Order VI Rule 17 of C.P.C. and the judgments referred to above, I do not find any illegality or irregularity in the order passed by the trial Court.

11) 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

23.02.2017

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