

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION NO.2100 of 2017

ORDER :

Aggrieved by the order dated 20.02.2017 passed in I.A.No.162 of 2016 in A.S.No.1 of 2010, wherein the application seeking amendment of plaint was allowed, the present Civil Revision Petition is filed.

2. The respondent herein filed O.S.No.231 of 2005 before the Court of Principal Junior Civil Judge of Punganur, restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of his half share in the suit schedule tamarind trees, and also restraining the defendant and his men from cutting the tamarind trees or its branches by way of permanent injunction. After a full-fledged trial, the suit was dismissed on the ground that the injunction against the co-owner is not maintainable and also on the basis of admission made by DW1 that he has purchased only half share in the tamarind trees. The Court below also observed that the remedy available to the plaintiff would be to seek partition by way of declaration to half share in the suit schedule tamarind trees. Aggrieved by the dismissal of the suit, the plaintiff preferred an appeal in the year 2010. Six years thereafter, I.A.No.162 of 2016 came to be filed, seeking amendment of plaint. The main ground taken for amendment of the plaint is that after going through the judgment, it was advised to him that it would be appropriate to amend the prayer portion in the plaint, seeking partition of the suit schedule tamarind trees into two equal shares and to allot such half equal share to the plaintiff. The same is opposed by the defendant.

But however, the learned appellate Judge allowed the said I.A. Challenging the same, the present CRP came to be filed.

3. The learned counsel for the petitioner relied upon the judgment of the Apex Court in *Revajeetu builders and Developers Vs. Narayanaswamy and Sons and others*¹, in support of his plea.

4. Learned counsel for the respondent, relied upon the judgments of the Apex Court in *North Eastern Railway Administration, Gorakhpur Vs. Bhagwan Das*², *Pankaja and another Vs. Yellappa (died) by LRs. and others*³, *Om Prakash Gupta Vs. Ranbir B. Goyal*⁴ wherein the Apex Court dealt with a situation as to whether the subsequent events can be taken into consideration for seeking amendment of the plaint.

5. In *Om Prakash Gupta's* case (supra), the Apex Court held that a person requesting the Court to take notice of such events, must make out a case justifying such notice being taken. It was further held that subsequent events can be taken cognizance of only if Court's attention is invited towards them, according to established rules of procedure, so that the prerequisites of affording the opposite party an opportunity of meeting the new case and of determining the real questions in controversy are fulfilled.

In *North Eastern Railway Administration* case (supra), it was a case where the appellant therein sought for additional evidence at

¹ (2009) 10 SCC 84

² (2008) 8 SCC 511

³ (2004) 6 SCC 415

⁴ (2002) 2 SCC 256

the appellate stage. In the said judgment, the Court also dealt with Order 6 Rule 17 of CPC in paragraph No.16, which reads as under:

“16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In *Pirgonda Hongonda Patil Vs. Kalgonda Shidgonda Patil* (AIR 1957 SC 363), which still holds the filed, it was held 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. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs.

In *Revajeevu builders and Developers(supra)*, the Apex Court held that though the Courts have wide discretion in the matter of amendment of pleadings but Court's powers must be exercised judiciously and with great care. While deciding applications for amendments the Court must not refuse bonafide, legitimate, honest and necessary amendments and should never permit malafide, worthless and/ or dishonest amendments. The basic test which must govern grant or refusal of amendment is whether such amendment is necessary for determination of real question in controversy or for proper and effective adjudication of the case. The other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily, if the other side is compensated by costs, then there is no injustice but in practice hardly any Court grants

actual costs to the opposite side. The Courts have very wide discretion in the matter of amendment of pleadings but Court's powers must be exercised judiciously and with great care. The Court in order to take into account whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case, other factors/ principles to be kept in mind while granting or refusing the amendment.

It is to be noted that while allowing the said I.A., which was filed six years after filing of the appeal, the Court below held that though new cause of action arose in the appeal, but since the proposed amendment would not change the jurisdiction; would not cause any prejudice to the respondent and as the petitioner therein was ready to pay additional Court fee towards additional relief claimed, the amendment of the plaint was allowed. It is further held that the said amendment would shorten the litigation enabling complete justice to the parties. It is to be noted that in view of the proviso to order VI Rule 17, no application for amendment shall be allowed after the commencement of unless the Court comes to the conclusion that inspite of due diligence, the parties could not have raised the matter before the commencement of trial.

In the instant case, the suit, which was filed in the year 2005 was dismissed in the year 2010. Though the same situation existed even then, no application was made for amendment of the plaint before the said Court at the earliest point of time. Even after filing of the appeal, the plaintiff kept quiet for nearly six years. It appears that when the matter was about to be heard finally, the present I.A.

came to be filed for amendment of the plaint. Further, the suit was for permanent injunction and the amendment which is now sought, is for partition of the tamarind trees.

It is also to be noted herein that the appellate Court categorically held that the amendment would give rise to new cause of action in the appeal. That being the position, definitely new issues have to be framed and further evidence may also required to be adduced, since the nature of the suit itself gets changed from injunction to partition. When the finding of the Court below itself states that the said amendment would give rise to a new cause of action, I am of the view that the Court below erred in allowing the said application.

6. Having regard to the above circumstances, this Court is of the view that the order under challenge warrants interference and accordingly the CRP is allowed setting aside the order granting amendment of the prayer in the plaint, pending appeal. No costs.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

09.08.2017
vhb