

ZX THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.3696 and 3697 of 2016

COMMON ORDER:

1) C.R.P.No.3696 of 2016 is filed, against the order dated 10.06.2016 passed in I.A.No.434 of 2016 in O.S.No.220 of 2012 on the file of the I Additional Junior Civil Judge, Tirupati, wherein an application filed under Section 151 of C.P.C. to re-open the suit in O.S.No.220 of 2012 was allowed.

2) C.R.P.No.3697 of 2016 is filed, against the order dated 10.06.2016 passed in I.A.No.433 of 2016 in O.S.No.220 of 2012 on the file of the I Additional Junior Civil Judge, Tirupati, wherein an application filed under Order VI Rule 17 read with Section 151 of C.P.C. to amend the plaint by adding the relief of declaration of right and title over the plaint schedule property was allowed.

3) Since the issue involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are disposed of by this common order.

4) The facts in issue are as under:

5) The first respondent/plaintiff filed O.S.No.220 of 2012 against defendant Nos.1 to 6 to declare the orders passed by defendant No.5 in D.Dis.No.H/ 661/ 2009, dated 06.04.2011 as null and void and consequently for grant of permanent injunction restraining the defendants from alienating the plaint schedule

property. When the suit is posted for arguments, the plaintiff filed petitions to re-open the suit and also to amend the relief in the suit, for proper adjudication so as to establish his title over the plaint schedule property. It is the case of the plaintiff that due to lack of knowledge he could not instruct his counsel to seek the relief of declaration of title at the time of filing of suit. It is also his case that the proposed amendment neither cause any prejudice to the defendants nor change the nature of the suit.

6) Defendant Nos.1 to 4 filed counter stating that with a malafide intention and to procrastinate the suit proceedings the plaintiff filed the present applications only after completion of arguments. It is further stated that proposed amendment will totally change the nature and character of the present suit and serious prejudice would be caused to the respondent.

7) Defendant Nos.5 and 6 did not file their counter.

8) After considering the rival submissions made, the trial Court allowed both the petitions. Challenging the same, the present Civil Revision Petitions are filed.

9) Learned counsel for the petitioner submits that when the suit is posted for arguments the plaintiff filed applications seeking amendment of the relief and that the said application was erroneously allowed by the trial Court.

10) Learned counsel for the respondent/plaintiff would submit that the amendment that is sought to be made is a very innocuous

one and that the nature of the suit will not get altered or changed. This amendment is only sought to be made for the purpose of avoiding any future complications and that no prejudice would be caused to the defendants.

11) In view of the rival submissions made, the question that arises for consideration is whether the trial Court was right in allowing the amendment after the commencement of trial.

12) Before proceeding further it would be appropriate to refer to Order VI Rule 17 of C.P.C., which reads as under:

“17. Amendment of pleadings. The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

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.”

13) 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 taken into consideration by the Courts while allowing or rejecting the application for amendment:

¹ (2009) 10 SCC 84

- 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.
- 14) Admittedly, the suit is posted for arguments but under Order 6, Rule 17 of the Code, the court may, at any stage of the proceedings, allow either party to amend his pleadings and all such amendments shall be made as may be necessary for the purposes of determining the real questions in controversy between the parties.
- 15) While ordering an amendment, the Court has to see whether such amendment is imperative for proper and effective adjudication of the case, whether the amendment is bona fide or mala fide in case such amendment is ordered; and whether any prejudice would be caused to the other party which cannot be ultimately compensated in terms of money. The Court must also

consider as to whether the amendment if refused, would lead to injustice or multiple litigation. One more principle to be followed while considering the request for amendment is as to whether it would change the character or nature of the case.

16) In *Pankaja v. Yellappa*² the Apex Court held as under:

“If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed. An amendment seeking declaration of title shall not introduce a different relief when the necessary factual basis had already been laid down in the plaint in regard to the title.”

17) A perusal of the material on record would show that the plaintiff pleaded in the plaint that he is the absolute owner of the suit property having acquired the same through a registered settlement deed dated 22.09.1980 vide document No.3960, while he was minor. Defendant No.1 obtained pass book and title deed over the suit property basing on an un-registered sale deed, alleging that the mother of the plaintiff sold the said property in his favour. Aggrieved by the same, the plaintiff filed an appeal before the Revenue Divisional Officer which was dismissed. It is also to be noted in the plaint that defendant No.1 pleaded in the appeal that the mother of the plaintiff has sold the suit property in favour of defendant No.1 through un-registered sale deed. It is the case of the plaintiff that as per Hindu Minority, Guardians and Wards Act the mother of the plaintiff has no right to sell away the

² (2004) 6 SCC

property without obtaining permission from the competent court. Hence, he filed a suit for declaring the order passed by the Revenue Divisional Officer as null and void but due to lack of knowledge he could not seek the relief of declaration of title.

18) Admittedly, the plaintiff sought a declaration of the order passed by the Revenue Divisional Officer as null and void since the mother of the plaintiff has no right to sell away the property without the permission of the Court. Now he sought amendment of plaint by adding the relief of “declaration of right and title over the plaint schedule property as he would be the absolute owner of the same”. Therefore, in my view the amendment sought for will not in any way alter the nature of the suit and that it is imperative for proper adjudication of the case.

19) In view of the judgment referred to above and having regard to the facts and circumstances of the case, I see no merits in the revisions and the same are liable to be dismissed.

20) Accordingly, both the Civil Revision Petitions are dismissed. There shall be no order as to costs.

21) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

05.01.2017
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