

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5214 of 2016

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India, is filed challenging the Order dt.21.09.2016 in I.A.No.454 of 2015 in O.S.No.128 of 2011 passed by the Senior Civil Judge, Markapur, declining to grant leave to amend the plaint under Order 6 Rule 17 CPC.

The petitioner/plaintiff filed a suit for cancellation of the Sale Deed dt. 22.11.2010 executed by respondent No.2 in favour of respondent No.1 and later the petitioner filed a petition under Order 6 Rule 17 CPC seeking leave to amend the plaint by the petitioner to claim declaration of title and consequential permanent injunction on various grounds. But the respondents opposed the application on various grounds. However, upon hearing both the counsel, the petition was dismissed mainly on the ground that the trial has already been commenced and such amendments cannot be allowed except where the petitioner is able to satisfy the Court that in spite of due diligence, those facts could not be brought to the notice of this Court by way of amendment.

Aggrieved by the dismissal Order dt. 21.09.2016 in I.A.No.454 of 2015 in O.S.No.128 of 2011, the present Revision Petition is filed raising several contentions, mainly on the ground that the trial has not been commenced unless the witness entered into the witness box and placed reliance on a judgment reported in *Perim Janardhana Rao v. Malepati Balaji and others*¹ and *Vantipalli Surya Venkata Satya Prasad and others v. Gangumalla Suryakantham and others*² and prayed to set aside the order passed by the trial Court in I.A.No.454 of 2015.

During hearing, the learned counsel for petitioner reiterated the contentions raised before the trial Court and requested to grant leave to amend the plaint appropriately as claimed in the petition.

Per contra, the learned counsel respondent would contend that the trial is deemed to have been commenced on the date when the issues were framed and not from the date when the witness entered into the dock and that apart a time barred amendment cannot be allowed and placed reliance on

¹ 2015(2) ALT 649

² 2016(4) ALT 581

the full bench judgment of the Apex Court in *Kailash v. Nanhku and others*³ and *Vidyabai and others v. Padmalatha and another*⁴.

The suit O.S.No.128 of 2011 was filed in the year 2011 and the defendant filed Written Statement on 24.02.2012 denying, right and title of the plaintiff. The petition before the trial was filed under Order 6 Rule 17 CPC on 07.04.2015, which is filed after three years one month thirteen days from the date when the right and title of the petitioner/plaintiff was denied for the first time, it is deemed to be the date when the right to sue first accrued. The limitation under Article 58 for declaration of title is three years, which starts from the date when the right to sue first accrued. Thus, the right to sue in this suit accrued on 24.02.2012. Hence, by the date of filing application under Order 6 Rule 17 CPC, the claim for declaration of title is barred by limitation and such time barred amendment cannot be allowed, in view of the judgment in *Revajeetu Builders and Developers v. Narayanaswamy*

³ (2005)4 SCC 480 and

⁴ (2009) 2 SCC 409

*and sons and others*⁵, which is reiterated in *Ramesh kumar Agarwal v. Rajmala Exports Private Limited and others*⁶, in which the case of 2012(4) SCJ 724 was referred.

In *Revajeetu Builders and Developers's* case, the Apex Court, while considering several aspects in para Nos. 10 and 11 laid the following guidelines for consideration of application under Order 6 Rule 17 CPC and they are as follows:

“On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration 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”.

Guideline No.6 is the relevant guideline, which specifically says that 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.

⁵ 2009(8) SCJ 401

⁶ 2012((4) ALT 1 (SC)

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17 CPC.

In the present suit, apparently, the claim for declaration of title is filed hopelessly barred by limitation since the application was filed one month thirteen days after expiry of limitation, prescribed under Article 58 of the schedule annexed to the Limitation Act. Keeping in mind the guideline No.6, the proposed amendment cannot be allowed.

The main ground urged before the Court was that the proposed amendment is not a pre-trial amendment and in view of the interdict under proviso to Order 6 Rule 17 CPC, the petition is dismissed. Here, in this suit, the contention of the petitioner is that no witness was examined by the date of filing the application. Therefore, the trial is not deemed to have been commenced and relied on a judgment of this Court in *Perim Janardhana Rao's case and Vantipalli Surya Venkata Satya Prasad's case* (1 and 2 supra).

But, this principle is contrary to the principle laid down by the full bench judgment of the Apex Court in *Kailash's*

case, where in para No.13 of the Judgment the Apex Court categorically held as follows:

“At this point the question arises : When does the trial of an election petition commence or what is the meaning to be assigned to the word 'trial' in the context of an election petition? In a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial or for making the case ready for trial. As held by this Court in several decided cases, this general rule is not applicable to the trial of election petitions as in the case of election petitions, all the proceedings commencing with the presentation of the election petition and upto the date of decision therein are included within the meaning of the word 'trial'.

Following the *Kailash's* case, while disagreeing with the principle in *Baldev Singh v. Manohar Singh*⁷, the Apex Court held in para No.11 as follows:

“From the order passed by the learned Trial Judge, it is evident that the respondents had not been able to fulfill the said pre-condition. The question, therefore, which arises for consideration is as to whether the trial had commenced or not. In our opinion, it did. The date on which the issues are framed is the date of first hearing. Provisions of the Code of civil Procedure envisage taking of various steps at different stages of the proceeding. Filing of an affidavit in lieu of examination in chief of the witness, in our opinion, would amount to 'commencement of proceeding'.

Therefore, the reason assigned by the trial Court for dismissing the application is based on the principle laid down by the Apex Court. Moreover, the affidavit is silent as to exercise of due diligence as required under Order 6 Rule 17 proviso. Therefore, the Order passed by the trial Court cannot

⁷ (2006)6 SCC 498

be faulted and consequently, the revision petition is liable to be dismissed, as I find no legal infirmity in the order under challenge.

Accordingly, this Civil Revision Petition is dismissed.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 06-07-2017.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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