

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2584 of 2017

ORDER:

1) Aggrieved by the order, dated 24.03.2017, passed in I.A.No.606 of 2016 in O.S.No.43 of 2012 on the file of the II Additional District Judge, Madanapalle, wherein an application filed under Order VI Rule 17 of C.P.C. seeking permission of the Court to amend the plaint was allowed, the present Civil Revision Petition came to be filed by defendant Nos.1 and 2 under Article 227 of the Constitution of India.

2) The respondent/plaintiff filed O.S.No.43 of 2012 seeking division of the plaint schedule property into two equal shares and to allot one such share to the plaintiff being her ancestral right and another 1/3rd share from out of the share of her father with metes and bounds by taking into consideration the good and bad qualities. Pending the said suit, I.A.No.606 of 2016 came to be filed by the plaintiff to add one more item of the family property to the suit schedule property and to make consequential amendments therein.

3) A counter came to be filed by the petitioners stating that the property mentioned in O.S.No.69 of 2016 is a separate property of first petitioner and that the same does not belonged to Yarlagadda Ramaiah, who was never in possession of the same. It was further

stated that the said suit was decreed in favour of the 1st petitioner against the plaintiff and others directing them not to interfere with his peaceful possession and enjoyment of the over the property. It is also stated that without disclosing the said fact, the plaintiff filed the present application seeking amendment of the plaint.

4) After considering the rival submissions made, the trial Court allowed the petition holding that in the absence of any cogent evidence, it is not desirable to rely on the contention of the respective parties to decide as to whether the particular property is the ancestral or joint. It is pleaded that even if any relief is granted to the petitioner, the same does not change the basic structure of the suit but only adds one more item to the schedule annexed to the original plaint and the rights of the parties can be adjudicated after a full fledged trial. Challenging the same, the present Civil Revision Petition is filed by defendant Nos.1 and 2.

5) Learned counsel for the petitioners would submit that the property is not the ancestral or family property of the plaintiff and that she has never enjoyed the same. It is urged that she does not have any joint share in the said property as well. The said property was purchased by the mother of respondent No.1 in his name when he was minor and submits that the said property is the self acquired property of defendant No.1.

6) Learned counsel for the respondent/plaintiff would submit that the subject property was purchased in the name of defendant No.1, when he was minor, and the same is not self acquired property of defendant No.1. Hence, the plaintiff is also having share in the said property.

7) Before proceeding further it would be relevant 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."

8) A perusal of the material on record would show that defendant No.1 filed O.S.No.69 of 2016, seeking permanent injunction against the plaintiff and others, stating that it is a separate property. The said suit was decreed in his favour granting permanent injunction against the plaintiff and others which was not brought to the notice of the Court.

9) 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) 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.

10) 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

¹ (2009) 10 SCC 84

² (2009) 14 SCC 525

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 the exercise of its jurisdiction. Thus, unless the jurisdictional fact, as envisaged therein, is found to exist, the Court will have no jurisdiction to allow the amendment of the plaint.

11) 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, when 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. In the instant case admittedly trial has not commenced and the suit is posted for trial on payment of costs.

12) In **P.Prakash v. Poosa Muthyalu and others**³, a learned Single Judge of this court held as follows :

"It is true that the Court may at any stage of the proceedings allow either party to alter or amend the pleadings in such manner and all such amendments shall be made as may be necessary for purposes of determining the real question involved between the parties. It is equally true, that a very liberal approach is to be adopted in matters relating to the amendment of the pleadings, so long as the period of limitation provided has not expired, adversely affecting the accrued rights of others. The principal object in allowing the amendments is to facilitate the Court to decide the rights of the parties in a comprehensive manner. But however, no amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time. The relevant

³ 2015(5) ALD 19

principles in this regard have been crystallized by Sarkar, J in [A.K. Gupta & Sons Limited v. Damodar Vally Corporation](#) in the following words:

7. It is not in dispute that at the date of the application for amendment, a suit for a money claim under the contract was barred. The general rule no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit on new case or cause of action is barred: *Weldon v. Neale* (1887) 19 QBD

394. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than, a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation: see [Charan Das v. Amir Khan](#) 47 Ind App 255: AIR 1921 PC 50 and [L.J. Leach and Company Ltd v. Jardine Skinner and Company](#): 1957 SCR 438 : AIR 1957 SC 357.

8. The principal reasons that have led to the rule last mentioned are first, that the object of Courts and rules of procedure is to decide the rights of the parties and not to punish them for their mistakes (*Cropper v. Smith* (1884) 26 Ch D 700 (710-711) and secondly, that a party is strictly not entitled to rely on the statute of limitation when what is sought to be brought in by the amendment can be said in substance to be already in the pleading sought to be amended [Kisandas Rupchand v. Rachappa Vithoba ILR](#) (1909) 33 Bom 644 at 651, approved in [Pirgonda Hongonda Patil v. Kalgonda Shidgonda](#): 1957 SCR 595 (603) : AIR 1957 SC 363 at p.366.

9. The expression "cause of action" in the present context does not mean "every fact which it is material to be proved to entitle the Plaintiff to succeed" as was said in *Cooke v. Gill* (1873) 8 CP 107 (116), in a different context, for if it were so, no material fact could ever be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in *Robinson v. Unicos Property Corporation Ltd.* 1962 All ER 24, and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words "new case" have been understood to mean "new set of ideas": *Dornan v. J.W. Ellis and Company Ltd.* 1962 1 All ER 303. This also seems to us to be a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any party by lapse of time. Again in [B.K. Narayana Pillai vs. Parameswaran Pillai and another](#) , the relevant principle is spelt out as under: The principles applicable to the amendments

of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendments of the written statement as the question of prejudice is less likely to operate in that event. The Defendant has a right to take alternative plea in defense which, however, is subject to an exception that by the proposed amendment the other side should not be subjected to injustice and that any admission made in favor of the Plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided that proposed amendment does not alter or substitute a new cause of action on the basis of which the original lies was raised or defense taken. Inconsistent and contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. Proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates (sic results) in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filling the petition for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.

After exhaustively considering the subject, the Justice Dalveer Bhandari speaking for the Court in [Revajetu Builders and Developers vs. Narayanaswamy and Sons and ors](#) has culled out the relevant principles in paragraphs 67 of the judgment which are as under: (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.

When we apply these legal principles to the present fact scenario, it clearly emerges that, in a suit for partition, the plaintiff as well as the defendants have

similar rights in the suit schedule properties. But however, the cause relating to declaration of a sale deed as null and void is entirely a different cause of action. This apart, in the intended paragraph 12-A what the petitioner/plaintiff is seeking is to declare a sale deed which is registered as on 17.12.1969 as null and void and not binding on the plaintiff. By the time I.A.No.781/2014 is moved on 12.08.2014 nearly 45 years time has elapsed from the date of that sale transaction. By no stretch of imagination, the rights that have accrued and crystallized in favour of a purchaser of such a sale deed cannot be annulled after such lapse of time. Similarly, in paragraph 12-B, what the plaintiff intended was to annul a sale deed executed and registered on 01.09.1999, after 15 years time has elapsed by. Therefore, the principle no.6 culled out in *Revajeetu Builders case* and *B.K. Narayana Pillais case* is clearly attracted to the present case. The present relief which the petitioner/plaintiff seeks to claim is based upon a totally different cause of action and a new set of facts which have no commonality with those pleaded in the original plaint are sought to be introduced. I have, therefore, no hesitation in my mind to hold that the present application seeking amendment alters the entire nature of the case and pleadings set up in the original plaint."

13) In **Chander Kanta Bansal v. Rajinder Singh Anand**⁴, the Apex Court while dealing with the object of amendment under Order VI Rule 17 of CPC observed as under:-

"13. The entire object of the said amendment is to stall filing of applications for amending a pleading subsequent to the commencement of trial, to avoid surprises and the parties had sufficient knowledge of the others case. It also helps in checking the delays in filing the applications. Once, the trial commences on the known pleas, it will be very difficult for any side to reconcile. In spite of the same, an exception is made in the newly inserted proviso where it is shown that in spite of due diligence, he could not raise a plea, it is for the court to consider the same. Therefore, it is not a complete bar nor shuts out entertaining of any later application. As stated earlier, the reason for adding proviso is to curtail delay and expedite hearing of cases.

15. As discussed above, though first part of Rule 17 makes it clear that amendment of pleadings is permitted at any stage of the proceeding, the proviso imposes certain restrictions. It makes it clear that after the commencement of

⁴ (2008)5 SCC 117

trial, no application for amendment shall be allowed. However, if it is established that in spite of "due diligence" the party could not have raised the matter before the commencement of trial depending on the circumstances, the court is free to order such application."

14) Therefore, from the judgments referred to above, it is clear that in normal course amendment cannot be permitted by the Court after the commencement of the trial. However, the same is permissible if the court comes to a conclusion that inspite of due diligence party could not have raised the plea before the commencement of trial. Further, amendment of pleadings cannot be allowed to introduce with a new set of facts causing prejudice to any of the rights acquired by a party due to lapse of time.

15) The Apex Court in **Surender Kumar Sharma v. Makhan Singh**,⁵ held that even if the amendment prayed for is belated, the court while considering such belated amendment, must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by costs or otherwise.

16) Similarly in **Sajjan Kumar v. Ram Kishan**,⁶ the Apex Court held that any error committed by the trial court can be corrected by the High Court in exercising of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It was further held as under:-

⁵ (2009)10 SCC 626

⁶ (2005) 13 SCC 89

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

17) Keeping in view the legal position laid down, I shall now proceed as to whether the trial court was justified in allowing the application for amendment of plaint. The affidavit filed in support of the I.A., shows that the petitioners therein wanted to add one more item of the family property into the suit schedule property, thereby permitting the petitioner to make necessary consequential amendments, including payment of court fees. The reason why it was not included and why it was sought to be included by way of amendment, came to be explained in the affidavit filed in support of the same. It is stated that though the plaintiff was aware about the land but she was not able to get the details. According to her, the first defendant himself filed the suit in O.S.No.69 of 2016 on the file of Principal Junior Civil Judge, Punganuru through which she came to know the particulars of the said item. Having realized that she would get a share therein, and to protect her interest in the said item, wanted to include the same in the list of properties. It is further admitted that the said property though stands in the name

of D-1, but it was only nominal and never acted upon, and it is only a family property.

18) It is to be noted here that O.S.No.69 of 2016 came to be filed by the first petitioner herein seeking injunction against the first respondent herein. It is no doubt true that the suit was decreed but it was an *ex parte* decree. Even otherwise, it is to be noted that O.S.No.69 of 2016 was filed by the petitioner seeking injunction restraining the defendants i.e., the respondents herein from interfering with their possession and enjoyment. In fact the plaintiff/respondent herein states that the disputed property is in the name of the defendant and it is in his possession but he has no right over the same. Except the property being in his name, the defendant has no right or title over the property. Inclusion of the said property in the list, more so, when the trial has not yet commenced, would not cause any prejudice to the party. The issue as to whether the property in dispute is a joint family property or a self-acquired property can only be decided when both the parties adduce evidence to that effect.

19) Since each one of them are claiming right over the property and taking into consideration that no prejudice would be caused to either of the parties, if the same is included in the list of the property and as the case is still at the nascent stage and the said

amendment does not alter the basic structure of the suit, I am of the view that the order under challenge warrants no interference.

20) Accordingly, the Civil Revision Petition is dismissed. No costs.

Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt: 04.09.2017

GKV/GM

