

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1193 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the Order Dt. 01.02.2017 in I.A.No.592 of 2016 in O.S.No.738 of 2016 passed by IX Junior Civil Judge, City Civil Court, Hyderabad, dismissing the application filed under Order VI Rule 17 CPC.

The parties to the present petition are referred as in I.A.No.592 of 2016 i.e., petitioners and respondent, for the sake of convenience.

The petitioners/plaintiffs filed a suit for injunction simplicitor and in I.A.No.175 of 2015 in O.S.No.738 of 2016, the trial Court directed both the parties to maintain *status quo* till 30.02.2016. However, it is the contention of the petitioners that on 24.03.2016, the respondents allegedly occupied the passage and raised compound wall, despite the *status quo* Order passed by this Court. Therefore, the petitioners filed the petition seeking declaration of right of enjoyment over the passage.

The respondents filed counter denying material allegations, *inter alia* contending that the respondents did not grab the suit property and that is being used exclusively by the respondents and

they purchased the right in the path way along with the land under registered Sale Deed. Therefore, the petitioners are not entitled to claim any right therein. However, the suit, which is filed for injunction simplicitor, cannot be converted into a suit for declaration and in view of the bar under provisio to Order 6 Rule 17 CPC, the amendment petition cannot be allowed and prayed for dismissal of the petition.

The trial Court, upon hearing both the counsel, held that the suit, which is filed for injunction simplicitor, cannot be converted into a suit for declaration mandatory injunction and perpecutal injunction and several issues have to be decided and in view of the pendency of application under Section 144 of CPC in I.A.198 of 2016 in I.A.No.175 of 2016 as the issue is triable issue and thereby dismissed the petition.

Assailing the Order passed by the trial Court, the present Civil Revision Petition is filed while contending that subsequent event can be brought on record by amending the plaint invoking under Order 6 Rule 17 CPC and the incident of alleged dispossession is subsequent to passing interlocutory order directing both the parties to maintain *status quo* and such amendment can be brought on record and placed reliance on a judgment reported in *Sampath*

*Kumar v. Ayyakannu and another*¹. But, the trial Court did not consider the scope of the amendment, conversion and change the nature of the suit etc., in proper perspective and committed an error in passing the Order.

During hearing, Sri Mohd Osman Shaheed, learned counsel for the petitioners, while reiterating the contentions raised in the grounds, specifically contended that when the petitioners was not allowed to enjoy the joint path way allegedly, the petitioners right was denied directly and thereby they are not entitled to seek amendment of the plaint claiming declaration of their right to enjoy the suit schedule property and relied on a judgment referred to *infra*.

Per contra, learned counsel for the respondent supported the order in all respects and contended that conversion of suit from injunction simplicitor to declaration amounts to change of the nature of the suit and thereby it is impermissible and prayed to confirm the Order passed by the trial Court dismissing the present revision filed under Article 227 of the Constitution of India.

Undoubtedly, the petitioners filed a suit for injunction simplicitor and obtained an interim Order of *status quo* dt. 23.03.2016. But, the allegation is that the respondents raised

¹ (2002) 7 SCC 559

compound wall, thereby restrained the petitioners from using the path way or enjoying the right over the path way. Therefore, they sought leave of the Court to amend the plaint by converting the suit for injunction simplicitor into a suit for declaration and mandatory injunction for removal of the wall. Therefore, the proposed amendment is only on account of the alleged subsequent event of construction of compound wall obstructing the petitioners from using path way or enjoying the right over the path way. In such case, subsequent event can only be brought on record by amendment to the plaint invoking under Order 6 Rule 17 CPC. Therefore, the present petition is filed.

In similar circumstances, the Apex Court in *Sampath Kumar's case*, held as follows:

“In the present case the amendment is being sought for almost 11 Years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back to the date of the suit and thereby depriving the defendant of the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of prescriptive title claimed to have been earned by the defendant. The interest of the defendant can be protected by directing that so far as the reliefs of declaration of title and recovery of possession, now sought for, are concerned the prayer in that regard shall be deemed to have been

made on the date on which the application for amendment has been filed”.

In view of the above judgment, the subsequent event can be taken into consideration and permit the parties to amend the plaint to avoid multiplicity of the proceedings since the fresh suit on the same cause of action is not barred by limitation.

In *Revajeetu Builders and Developers v. Narayanaswamy and sons and others*², which is reiterated in *Ramesh kumar Agarwal v. Rajmala Exports Private Limited and others*³, 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”.

² 2009(8) SCJ 401

³ 2012((4) ALT 1 (SC)

In view of the law declared by the Apex Court in the above two judgments, the Court has to take into consideration whether the proposed amendment would change the nature of the suit and cause of action or takes away the valuable right that accrued to the respondents and whether such amendment, if allowed, the fresh claim on the subsequent event is barred by limitation or not.

In the present case, originally the suit was filed for injunction simplicitor and proposing to convert the same into declaration by paying appropriate court fee would not amount to change of nature of the suit and because of subsequent event, the cause of action arose on the day when the respondents allegedly obstructed the petitioners from using the pathway or enjoying the right over the pathway for the additional reliefs claimed and such amendment can be permitted only to avoid multiplicity of the proceedings and that too the relief of declaration and mandatory injunction is not barred by limitation as on the date of filing petition. Therefore, granting leave to amend the plaint would not change the nature of the suit and moreover, it is necessary for deciding the real controversy between the parties. Apart from that, the trial has not commenced. Therefore, the interdict contained under the proviso to Order 6 Rule 17 CPC has not applicable to the present case and the question of prejudice does not arise since the defendants will have to file Written Statement and contest the matter. But, the trial Court did not take into consideration the guidelines laid down in *Ravajjet's*

case while deciding an application under Order 6 Rule 17 CPC. In such circumstances, the Order passed by the trial Court is erroneous and it is liable to be set aside.

In the result, this Civil Revision Petition is allowed setting aside the Order dt. 01.02.2017 in I.A.No.592 of 2016 in O.S.No.738 of 2016 passed by the IX Junior Civil Judge, City Civil Court, Hyderabad.

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

Date: 12-07-2017.
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M. SATYANARAYANA MURTHY, J



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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