

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.2566 of 2011

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dated 15.04.2011 in I.A.No.561 of 2011 in O.S.No.31 of 2001 passed by the Principal Junior Civil Judge, Ranga Reddy District at L.B.Nagar, allowing the petition filed under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure (for short 'C.P.C.') to amend the boundaries of the suit schedule property.

2. The petitioner filed suit represented by his power of attorney holder as he is working at Goa. Wife of the petitioner is illiterate and thereby she could not mention the correct boundaries mentioned in the sale deed under which the petitioner acquired the property. The mistake is purely due to illiteracy of his wife and therefore, sought for permission to amend the plaint incorporating correct boundaries as per the sale deed, which is marked as Ex.A.1.

3. The respondent opposed the petition and filed counter denying material allegations *inter alia* contending that at belated stage amendment cannot be permitted as per the proviso to Order VI Rule 17 of amended C.P.C. and the petitioner cannot be permitted to amend the plaint after commencement of trial and that the trial was commenced long back, sought for dismissal of the amendment petition.

4. The trial Court upon hearing argument of both counsel, allowed the petition on the ground that it is purely a mistake on account of illiteracy etc.

5. Aggrieved by the said order, the present revision petition is filed by the defendant on various grounds, mainly, contending that incorporation of new boundaries in the place of old boundaries would change the

nature of suit; that at belated stage amendment cannot be allowed i.e. after commencement of trial. Therefore, the trial Court did not consider the proviso to Order 6 Rule 17 of C.P.C, committed an error and prayed to set aside the order under challenge.

6. During hearing, learned counsel for the revision petitioner would contend that the respondent herein is aware about the pendency of the proceedings and the suit was dismissed in the year 2006 and the present respondent filed I.A for restoration along with delay condonation petition and thereby he is aware about the schedule annexed to the plaint describing the property. But after a long time, he filed the present petition for amendment of the plaint only to incorporate the boundaries in the place of boundaries already mentioned. As such amendment cannot be allowed in view of the bar under proviso to Order 6 Rule 17 of C.P.C. by virtue of the amended Act 22 of 2002. It is also contended that the respondent was cross examined at length with regard to the boundaries and now the present petition is filed only to fill up the lacunas. If such amendment is allowed, it would take away the valued right that accrued to the petitioner, prayed to allow the revision petition setting aside the order passed by the trial Court.

7. Learned counsel for the respondent contended that instead of mentioning the correct boundaries in Ex.A.1-Sale Deed wrong boundaries were mentioned due to illiteracy of the petitioner's wife, who is power of attorney holder of the petitioner. Therefore, such mistake can be rectified by amending the plaint, since the sale deed was already marked as Ex.A.1 in the suit itself, that would not take away the right of the petitioner and would not change the nature of the suit or cause of action and prayed to dismiss the revision petition, confirming the order passed by the trial Court.

8. Admittedly, the suit was filed in the year 2001 i.e. before amendment of C.P.C by Act 22 of 2002 and by the date of filing the suit there was no bar to permit the parties to amend their pleadings, but the proviso was incorporated subsequent to filing of the suit by Act 22 of 2002. In such a case, the amended provisions cannot be applied retrospectively.

9. The Apex Court in **Delhi Development Authority v. S.S. Aggarwal and others**¹ and **Chander Kanta Bansal v. Rajinder Singh Anand**², while deciding applicability of proviso to Order VI Rule 17 of C.P.C. the Apex Court in both the judgments held that the proviso introduced by Act 22 of 2002 has no application to the suit filed prior to amendment and it is not a ground to dismiss the amendment application.

10. The Apex Court in **A. Krishna Rao v. A. Narahari Rao and others**³, while dealing with an application under Order VI Rule 17 of C.P.C. held as follows:

"Rejection of petition under Order VI Rule 17 of C.P.C. on the ground that proposed amendment is inconsistent with original plea and petitioner cannot be permitted to raise such inconsistent plea is not justified. Amendment of pleading cannot be rejected even if proposed amendment has effect of raising conflict in plea. It is for the plaintiff to justify his pleadings and prove the same with reference to evidence. Since the procedure being handmaid of justice, a party cannot be deprived of his right to raise pleadings by way of amendment unless proposed amendment results in failure of justice."

11. Thus, in view of the principles laid down in the above judgments, the bar under the proviso to Order 6 Rule 17 of C.P.C is not applicable to

¹ 2011 (6) SCJ 496

² 2008 (6) SCJ 440

³ 2015 (1) ALT 113

the proceedings in the present case. Therefore, the amendment petition cannot be dismissed on such ground.

12. The second ground urged before this Court is that the respondent is aware about the proceedings in view of filing application for restoration of the suit in the year 2006 together with delay condonation petition. The respondent was working at Goa , the proceedings are being prosecuted by his wife, who is an illiterate. There is no dispute regarding purchase of property by the respondent and petitioner and that the sale deed is also marked as Ex.A.1, which consists of four boundaries with plot number; the contention of the learned counsel for the respondent is that he purchased plot No.223, whereas the respondent claiming that he purchased Plot No.222 with specific boundaries. According to Order 7 Rule 3 of C.P.C where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it and in such a case, the property can be identified by boundaries or numbers in a record for settlement of survey, the plaint shall specify such boundaries or numbers. Therefore, the requirement under Order 7 Rule 3 of C.P.C. is **only** to that the plaint shall disclose the boundaries or the number in the record for settlement of survey or door number etc. The purpose of mentioning the boundaries or number etc is only to enable the parties to identify the property, either with reference to number, or with reference to the boundaries. But here the plot number is mentioned as 222 in the plaint schedule while mentioning the boundaries wrongly. There was also no dispute about the purchase of Plot No.222 by the plaintiff. The respondent herein while contending that the petitioner/defendant purchased Plot No.223 under registered sale deed. So the identification of property is not in controversy with the boundaries mentioned in the sale deed, which is marked as Ex.A.1. On account of illiteracy of the power of attorney holder of the petitioner, the

boundaries were wrongly mentioned. Therefore, the Court can permit to rectify such mistake, more particularly when the document is marked as Ex.A.1, which contains the description of the property to identify.

13. According to Rule 17 Order 6 of C.P.C., 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. However, the principles to allowing petitions under Rule 17 Order 6 of C.P.C. are well settled. They are; the amendment shall not alter the basic structure or nature of the claim and that the amendment shall not alter take away the valuable right that accrued to the respondent or such amendment will not take away the unequivocal admissions made in the pleadings. However, by amendment to Rule 17 of Order VI of CPC an interdict is created to allow such amendments that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite of due diligence, the party could not have raised the matter ~~before~~ the commencement of trial. But this proviso has no application, as the suit was filed prior to Act 22 of 2002.

14. The suit was filed only for injunction simplicitor, but wrongly mentioning the boundaries in the schedule due to illiteracy; incorporating boundaries as per Ex.A.1 would not change the nature of the suit and would not take the valuable right that accrued to the petitioner or admission if any. In such a case, the Court can allow amendments of pleadings filed prior to Act 22 of 2002. Therefore, mere wrong mention of boundaries by mistake would not confer any benefit to the petitioner when the plot number is not in dispute.

15. In **Rajesh Kumar Aggarwal and others v. K.K. Modi and others**⁴.

the Apex Court held as follows:

"The object of Order 6 Rule 17 is that the Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. The rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court. The Court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting mala fide. The amendment to pleading should be liberally allowed since procedural obstacles ought not to impede the dispensation of justice. The Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard the rights of both parties and to subserve the ends of justice."

16. It is further held that

"While considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment."

17. In view of the principles laid down in the above judgment, pre-trial amendments can be allowed as a matter of routine. But here the amendment is subsequent to commencement of trial. The bar in the proviso to Order 6 Rule 17 of C.P.C has no application, apart from that the proposed amendment would not take away the valuable right that accrued to the petitioner or admission, if any and it would not change the nature of the suit. Therefore, granting leave to amend the plaint only to incorporate the boundaries in the schedule is not an erroneous exercise of jurisdiction by the Court.

⁴ 2006 (3) ALT 50 (SC)

18. Learned counsel further contended that there was lot of cross-examination by PW.1 with reference to the boundaries and drawn the attention of the Court to second para of the cross-examination. In para 2 of Cross-examination PW.1 elicited that he purchased Plot No.222 within the boundaries mentioned in the sale deed. He also admitted that his vendor purchased the property under Ex.A.1 sale deed with the specific boundaries and no suggestion was put to him denying the boundaries mentioned in the schedule annexed to the plaint. Now, if the plaintiff is permitted to amend the plaint, it would not cause any prejudice to the defendant and the plaintiff is at liberty to file an appropriate application for recall of the witness after amendment to cross examine the witness with reference to the boundaries and if such application is filed, the Court may consider such application and permit the parties to cross examine the witness.

19. On over all consideration of the entire material on record, I find no ground to warrant interference of the Court with the discretion exercised by the trial Court, as the proviso under Order 6 Rule 17 of C.P.C. has no application to the present case and apart from that it would not change the nature of suit and take away the valuable right that accrued to the petitioner or admission, if any. In such a case, the order under challenge cannot be reversed or set aside. Therefore, I find no ground warranting interference of this Court under Article 227 of the Constitution of India and consequently, the revision petition is liable to be dismissed.

20. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in the petition, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 23.06.2017
kvrn