

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.1050 of 2017

ORDER:

1) Assailing the order, dated 05.12.2016, passed in I.A.No.376 of 2016 in O.S.No.135 of 2011 on the file of the Principal Junior Civil Judge, wherein an application filed under Order VI Rule 17 and Section 151 of C.P.C. read with Rule 28 of the Civil Rules Of Practice, seeking amendment of plaint, was rejected, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The petitioner/plaintiff filed the above suit seeking permanent injunction restraining the respondents/defendants from interfering with her peaceful possession and enjoyment over the plaint schedule property. Defendant No.4 filed written statement while defendant Nos.3 and 5 adopted the same, denying the right and title of the vendor of the petitioner. Hence, the petitioner filed an application seeking amendment of the relief in the suit, from permanent injunction to declaration of right and title over the plaint schedule property and for establishment of his title over the plaint schedule property.

3) Defendant No.3 filed counter denying the averments in the affidavit filed in support of the petition. It is stated that the

defendants filed their written statement on 21.11.2011 denying the right and title of the plaintiff; with a malafide intention to procrastinate the suit proceedings, the plaintiff filed the present application. It is further stated that proposed amendment will totally change the nature and character of the present suit and that serious prejudice would be caused to the respondent.

4) After considering the rival submissions made, the trial Court dismissed the petition. Challenging the same, the present Civil Revision Petition is filed.

5) Learned counsel for the petitioner/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.

6) Learned counsel for the respondents would submit that when the suit is posted for trial the plaintiff filed application seeking amendment of the relief and that the said application was rightly dismissed by the trial Court.

7) 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.”

8) Admittedly, the suit is posted for trial, 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.

9) 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 sought is a bona fide one or made with a mala fide intention; 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.

10) In *Pankaja v. Yellappa*¹ the Apex Court held as under:

¹ (2004) 6 SCC 415

“If the granting of an amendment really subverts 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.”

11) In *Sampath Kumar v. Ayyakannu and another*² the Apex Court was faced with an application for amendment made 11 years after the date of the institution of the suit to convert through amendment, a suit for permanent prohibitory injunction into a suit for declaration of title and recovery of possession. Dealing with the said aspect, the Apex Court held as under:

“In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the Trial Court it was one to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the Trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiffs revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.

Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his

² (2002) 7 SCC 559

pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-form and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.”

12) 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 purchased the same from T.Gurava Reddy under a registered sale deed dated 23.05.1994. The defendants denied stating that the land exclusively belongs to China Chenga Reddy and the said Gurava Reddy has no right to execute sale deed in favour of the petitioner. Since the defendants denied the title of the vendor of the petitioner, he sought for amendment of the plaint by adding the relief of “declaration of right and title

over the plaint schedule property”. Admittedly, there is a delay in filing the application seeking amendment of plaint. But in Sampath Kumar case (2 supra), the Apex Court held that mere delay cannot a ground for refusing a prayer for amendment if granting of an amendment really subserves the ultimate cause of justice and avoid further litigation.

13) Hence, in view of the judgment of the Apex Court in Sampath Kumar case (2 supra) and having regard to the facts and circumstances of the case, the impugned order is set aside. The plaintiff is permitted to amend the plaint. However, in view of the delay in making an application for amendment, it is directed that the plaintiff shall pay a cost of Rs.2,000/- as a condition precedent to incorporate the amendment in the plaint.

14) Accordingly, the Civil Revision Petition is allowed. There shall be no order as to costs.

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

JUSTICE C. PRAVEEN KUMAR

22.09.2017
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