

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1000 of 2014

ORDER:

This Civil Revision Petition is filed by the petitioner/ plaintiff under Article 227 of Constitution of India, challenging the order, dated 04-02-2014 passed in I.A.No.1504 of 2011 in O.S.No.17 of 2010 by the Prl. Junior Civil Judge, Medchal, R.R. District, declining to accord permission to amend the plaint by adding the prayer to declare the plaintiff as absolute owner and possessor of the suit schedule property and consequently to cancel the registered sale deed, dated 29-06-1992.

The parties to the petition hereinafter referred as petitioner and respondent for convenience.

The petitioner filed suit on 09-03-2010 for grant of perpetual injunction restraining the respondent from interfering with the peaceful possession and enjoyment of the suit schedule property. On 27-04-2010 the respondent filed written statement denying the title of the petitioner specifically, setting-up independent title to the property. The petitioner also filed I.A.No.93 of 2010 for grant of interim injunction under Order XXXI Rules 1 and 2 of Code of Civil Procedure, wherein the Court ordered urgent notice instead of

granting *ad interim* injunction but the Court framed issues basing on the pleadings on record.

At this stage, the petitioner filed a petition for amendment of plaint converting the suit from injunction simplisitor to declaration of title and also for cancellation of registered sale deed, dated 29-06-1992 on the ground that the defendant denying the title of the plaintiff setting up independent title basing on the sale deed sought to be cancelled by way of amendment. The respondent filed counter denying the allegation while reiterating the contentions raised in the grounds of written statement regarding the title to the property and that the suit was filed collusively after the death of GPA holder. Apart from that the proposed amendment cannot be allowed as the issues were framed. When the matter was adjourned at the request of the petitioner, the trial could not be commenced. In such case the petitioner is not entitled to take advantage of his own fault to overcome proviso to Order VI Rule 17 of Code of Civil Procedure. Therefore, prays to dismiss the petition.

Upon hearing the arguments of both counsel the trial Court dismissed the petition on the ground that there are no merits in the proposed amendment. The trial Court also pointed out the conduct of the petitioner in obtaining

adjournment without commencing the trial after framing issues.

Learned counsel for the petitioner contended that the delay is not a ground to file petition under Order VI Rule 17 of Code of Civil Procedure as the trial has not yet commenced and the proposed amendment would not change the nature of the suit or cause of action and would not take away the admission or valuable right that accrued to the respondent, but the trial Court on discussing the merits of the proposed amendment, erroneously dismissed the petition. Hence, requested this Court to allow the amendment petition setting aside the order passed by this Court in I.A.No.1504 of 2011 in O.S.No.17 of 2010 and allow the revision.

Learned counsel for the respondent while reiterating the contentions urged before the Court contended that the proposed amendment is barred by limitation and that it is a collusive application filed by the petitioner to defeat the rights of the respondent and apart from that the trial could not be commenced only on account of the conduct of the petitioner. In such case, the petitioner is disentitled to claim relief under Order VI Rule 17 of Code of Civil Procedure.

Considering the rival contentions, the point that arises for consideration is:

“whether the Court can decide the merits of the proposed amendment while deciding a petition under Order VI Rule 17 of Code of Civil Procedure, if not whether the proposed amendment would change the nature of the suit, takes away the valuable right that accrued to the respondents and takes away the admission, if any, made, if not the petitioner be permitted to amend the plaint converting the suit from injunction simplisitor to declaration of title and for cancellation of registered sale deed.”

Order VI Rule 17 of Code of Civil Procedure deals with amendment of pleadings. Due to incorporation of proviso by Amendment Act in 22/2 there is a fetter or interdict on the powers of the Court to exercise the discretion after commencement of trial. But in the present case the trial is not yet commenced and the Court framed issues and posted the matter for trial. Therefore, the bar under proviso Order VI Rule 17 of Code of Civil Procedure will not come in the way of ordering amendment. Even otherwise if the petitioner is able to prove that despite exercise of due diligence such facts could not be brought on record by way of amendment, the Court satisfies that the petitioner despite exercise of due diligence could not bring those facts, by way of amendment, the Court can allow such amendment.

According to Order VI Rule 17 of Code of Civil Procedure 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 of law under Order VI Rule 17 of Code of Civil Procedure are well settled; they are that the amendment shall not alter the basic structure or nature of claim and that the amendment shall not take away the valuable right that accrued to the respondent or such amendment do not take away the unequivocal admission. For amendment under Order VI Rule 17 of Code of Civil Procedure interdict is created to allow such amendment 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 raise the matter before commencement of trial.

In view of the above, it is for the petitioner to satisfy the Court that on exercise due diligence he could not take steps to raise such plea before commencement of trial in a suit before trial Court. Allowing amendments prior to commencement of trial is a matter of routine. The petitioner who seeks permission to amend the plaint after commencement of trial has to establish that despite due

diligence he could not raise such plea. In the present case the trial has not yet commenced but the issues were framed. However, the matter was adjourned either at the instance of the petitioner or otherwise.

Undoubtedly, the suit was filed for injunction simplisitor initially but on account of denial of title in the written statement, setting up independent title based on a sale deed, which is sought to be cancelled by way of proposed amendment to the plaint, the petitioner filed the petition for amendment of plaint seeking additional relief for declaration of title and for cancellation of sale deeds. The Hon'ble Apex Court in ***Rameshkumar Agarwal v. Rajmala Exports Private Limited and others***¹, relying on ***Revajeetu Builders and Developers v. Narayanaswamy and Sons and others***², laid down certain principles to be followed while deciding the application under Order VI Rule 17 of Code of Civil Procedure, 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

¹ 2012 (4) ALT 1 (SC)

² 2009 (8) SCJ 401

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. These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are illustrative and not exhaustive.”

It is clear that while deciding the application for amendment ordinarily the Court must not refuse bona fide legitimate honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances but the Courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with costs. Normally amendments are allowed in the pleadings to avoid multiplicity of litigations.”

The Apex Court further held that amendment application (to) (sic) be filed immediately after filing suit i.e. before commencement of trial. If the petitioners are able to prove or explain as to how they failed to take steps before the trial Court (sic commenced) despite exercising due diligence the Court can allow such amendment. The factum of exercising due diligence depends upon circumstances.”

In ***Rajesh Kumar Aggarwal and others v. K.K. Modi and others***³, wherein 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.”

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.”

³ 2006 (3) ALT 50 (SC)

In ***Bairam Susheela v. Pendota Rama Rajaiah***⁴, it was held as follows:

“Mere grant of permission to amend the pleadings does not confer or take away the rights of the parties. On the basis or the amendment necessary issues have to be framed after giving an opportunity to the other party and evidence has to be adduced on the issues so framed if necessary. It shall always be open to the parties to raise such pleas as are open to them touching on the relief introduced through amendment.”

In the present case the petitioner want to introduce the amendment converting the suit for injunction simplisitor to declaration of title and for cancellation of registered sale deed as the respondent denied the title of the plaintiff setting up independent title for the first time in the written statement and thereby there is no occasion for the petitioner to file suit for declaration and cancellation of sale deed prior to filing of written statement. Since the petitioner came to know about the sale deed and setting up independent title for the first time after filing written statement the permission cannot be denied to petitioner to amend plaint.

In ***A. Krishna Rao v. A. Narahari Rao and others***⁵, this Court while dealing with application under Order VI Rule 17 of Code of Civil Procedure held as follows:

⁴ 2004 (5) ALT 233

⁵ 2015 (1) ALT 113

“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.”

Thus, in view of law declared by this Court and Hon’ble Apex Court the amendments prior to commencement of trial can be allowed as a matter of routine subject to specifying the three requirements, which I stated earlier. The proposed amendment shall not alter the nature of the suit and shall not take away the valuable right that accrued to the petitioner or the admission, if any made in the plaint. Here the proposed amendment would not change the nature of the suit but the question of limitation can be raised during trial. Keeping in mind Section 21 of Limitation Act the trial Court in paragraph No.5 of the order under challenge discussed about the merits of the case and said that the trial has not commenced only on account of conduct of the petitioner but that is not a ground to reject the request and that the Court is not expected to go into the merits of the case whether the petitioner will have a fair chance of success even after amendment is allowed,

therefore, the procedure adopted by the trial Court is contrary to the law declared by the Hon'ble Apex Court. The trial Court committed error in exercising discretionary power under Order VI Rule 17 of Code of Civil Procedure and declined the proposed amendment in adverting to the merits of the proposed amendment, attributing laches to the petitioner/plaintiff for not commencing trial but these two are not the grounds to deny amendment as it would not change the cause of action and by amendment the petitioner can avoid multiplicity of the proceedings. Hence, I find that the order of the trial Court is erroneous and the same is liable to be set aside by exercising the power under Article 227 of Constitution of India as the trial Court failed to exercise the discretion that vested on it. Accordingly, the point is answered.

In the result, the petition is allowed. However, the parties are at liberty to raise the plea of limitation or any other pleas during trial. There shall be no order as to costs.

Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

June 08, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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