

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.849 of 2017

ORDER :

Heard learned counsel for the petitioner, learned counsel for the respondents and perused the grounds urged in the revision.

2. The revision is maintained impugning the dismissal order, dated 17.01.2017, in I.A.No.535 of 2014 in the pending suit O.S.No.65 of 2010 on the file of the Junior Civil Judge at Jagtial. The revision petitioner is the plaintiff and revision respondents are the defendants in the said suit. The plaintiff filed the petition under Order VI Rule 17 C.P.C. read with Rule 28 of Civil Rules of Practice before the lower Court to permit him to amend the plaint in claim portion by adding paras 11, 12 and 14 and also prayer portion with consequential amendments.

3. The supporting affidavit prayer of him is that on 08.07.2010 he filed suit O.S.No.65 of 2010 for declaration that the registered sale deed bearing No.354 of 2010, dated 05.02.2010 on the file of the S.R.O., Mallial, is null and void and grant relief of perpetual injunction against defendant No.1 restraining him from interfering with the peaceful possession and enjoyment of the land, which he purchased by way of Registered sale deed bearing No.708 of 2010, dated 11.03.2010, on the file of the S.R.O., Mallial. The suit schedule property is an agricultural land of Ac.0.13 gts, Ac.1.21 gts and Ac.0.33 gts. in Survey Nos.351/AA, 358/AA and 380/AA respectively

situated at Pegadapelli Grampachayat and Mandal, Karimnagar District. Pending the suit, the plaintiff filed I.A.No.404 and 405 of 2010 for the relief of not to alienate and not to interfere with his possession over the plaint schedule lands, but said petitions were dismissed by the trial Court on 01.02.2011, due to absence of his previous counsel Sri P.S.Krishnaprasad. Taking advantage of dismissal orders of the petitions, defendant No.1 dispossessed him from the property on 01.06.2012 and as such he is seeking relief of declaration of title and recovery of possession also against defendants, consequently filed amendment petition. Counter-affidavit filed by defendant No.1 before the lower Court, wherein defendant No.1 admitting of filing of suit by the plaintiff and also filing and dismissal of I.A.Nos.404 and 405 of 2010. However it is contending that defendant No.2 was the absolute owner of the plaint schedule land and he had gifted the same to his nephew, by name, Bandari Srinivas, under document bearing No.499 of 1992, dated 15.05.1992, on the file of the S.R.O., Mallial, and basing on the said document, the plaint schedule land was mutated in the revenue records of Pegadapally village in his name and till then he was in possession and enjoyment of plaint schedule land till his death on 29.11.1997 in an application and later the lands were mutated in the name of his father, viz., Bandari Ramaiah and he was issued title deed and pattadar pass book. Later, Bandari Ramaiah for his necessities sold the lands in Sy.Nos.351/AA to an extent of Ac.0.13 gts., Sy.No.358/AA to an

extent of Ac.0.21 gts. and in Sy.No.380/AA to an extent of Ac.0.33 gts. situated at Pegadapally Village, for Rs.2,96,000/- and after receipt of total sale consideration, the said Bandari Ramaiah delivered possession of the said lands and executed registered sale deed bearing document No.354 of 2010, dated 05.02.2010 on the file of the S.R.O., Mallial and since then defendant No.1 is in possession and enjoyment of the plaint schedule lands, therefore the allegation of dispossessing the plaintiff is not true and that the plaintiff has no locus standi to file suit and also not entitled for the proposed amendment, which is with no even due diligence as per the amended provision.

4. The trial Court after hearing dismissed the petition with observation that the plaintiff is having knowledge that the suit lands were sold to defendant No.1 prior to his purchase and as per Article 58 Part I Schedule of the Limitation Act, the relief of declaration shall be sought within three years from the date of knowledge and the limitation expires by 27.10.2013, but the plaintiff filed the petition on 28.01.2014, as such the petition filed by the plaintiff is a time barred one. It is impugning the same, the present revision is maintained with the contentions that the order of the lower Court is contrary to law and unsustainable and in this case trial not even commenced to consider requirement of due diligence concerned and the conclusion of the claim is barred by time is erroneous, that too, when question of limitation is a mixed question of fact and law, apart from mere delay in seeking amendment is not a ground and it no way changes the

nature of the suit and the conclusion of the lower Court is erroneous for the reason of the claim made is subsequent to the dispossession and thereby impugned order conclusions are perverse and hence to set aside by allowing the revision.

5. Learned counsel for the revision petitioner/plaintiff reiterated the same. Whereas, it is the contention of the learned counsel for the revision respondents/defendants that the order of the lower Court supported by reasons and for this Court while sitting in revision there is nothing to interfere. Hence, to dismiss.

6. Heard and perused the material on record.

7. No doubt, the basic principle in considering the amendment of the pleadings if not working out injustice to the other side and where it is necessary for purpose of deciding the real controversy, but for if at all the effect of amendment is taking away the defendants accrued legal right from lapse of time unless there are special circumstances out weigh any said hardship.

7(a)(i) Coming to the scope of Order VI Rule 17 prior to the amendment by Acts 46/99 & 22/2002, several expressions of the Constitutional Courts referring to and relying upon the pre-constitutional expressions of the privy council and several High courts and Courts of other countries laid down that even at the stage of second appeal amendment of pleadings can be allowed, if it is necessary to shorten the litigation or to decide real controversy

between parties or to avoid future complications like in final decree proceedings or execution, provided that does not affect or prejudice the rights of the opposite parties, muchless changes the cause of action, for belated seeking is not a ground to reject, but for to award costs to compensate other side.

7(a)(ii) In *Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon*¹, the Apex Court referring to the earlier expression in *Purushottam Umedbhai & Co vs M/S. Manilal And Sons*² held in permitting amendment of plaint within the discretion of Court saying on technical grounds such amendment where necessary shall not be refused for the facts involved mentioned name of wrong person instead of real plaintiff, then question of limitation does not arise as it has to be treated as originally instituted in the name of the real plaintiff though his name is later amended, particularly from Paras 5 & 6 observed that rules of procedure are intended to be handmaid to the administration of justice. A party cannot be refused relief merely because of same mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting malafide, or that by his blunder, he had caused injury to his opponent which cannot be compensated for by an order of costs. However negligent or careless may have been the first motion and however late the proposed amendment, the amendment

¹ AIR 1969 SC 1267

² AIR 1961 SC 325=1 SCR 982

may be allowed if it can be made without injustice to other side. Any mis-description even amendment can be allowed under Section 153 CPC and need not always be under Order VI Rule 17 CPC. The well settled rule is that all amendments should be permitted as may be necessary for the purpose of determining the real question in controversy between the parties, unless by permitting the amendment injustice may result to the other side. The power to grant amendment of pleadings is intended to serve the ends of justice and is not governed by narrow or technical limitation. There was in fact an observation of Court without even application for amendment has power to grant leave to rectify any mis-description or bonafide mistake.

7(a)(iii) In *Vishwambhar & Ors. v. Laxminarayan (Dead) through LRs & Anr.*³, suit originally filed for recovery of possession on the basis that the alienations made by their mother-guardian were void and therefore liable to be ignored since they were not supported by legal necessity and without permission of the competent court and the alienations did not affect the interest of the plaintiffs in the suit property; an amendment was sought to be made after the limitation period had expired, for a prayer of declaration that the sale deeds dated 14-11-1967 and 24-10-1974 be set aside, recovery of possession of the properties sold from the respective purchasers, Section 8(2&3) of the Hindu Minority and Guardianship Act, 1956, say the natural

³ (2001) 6 SCC 163

guardian shall not, without previous permission of the court, transfer by sale any part of the immoveable property of the minor and any disposal in contravention of it is voidable at the instance of the minor or any person claiming under him. If in law the plaintiffs were required to have the sale deeds set aside before making any claim in respect of the properties sold, then a suit without such a prayer was of no avail to the plaintiffs as Article 60 of the Limitation Act prescribes a period of three years for setting aside a transfer of property made by the guardian of a ward, by the ward who has attained majority and the period is to be computed from the date when the ward attains majority. Since the limitation started running from the dates when the plaintiffs attained majority the prescribed period had elapsed by the date of presentation of the plaint so far as Digamber is concerned. By the date the defect was rectified (December 1985) by introducing such a prayer by amendment of the plaint the prescribed period of limitation for seeking such a relief had elapsed even against others. In the circumstances, the amendment of the plaint held could not come to the rescue of the plaintiff.

7(a)(iv) In *Sampath Kumar Vs. Ayyakannu*⁴ 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 was allowed holding, the basic structure of the suit is not

⁴ (2002) 7 SCC 559

altered by the proposed amendment and 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 by allowing the amendment that would curtail multiplicity of legal proceedings.

7(b)(i) In **Rajkumar Gurawara (dead) through LRs V. S.K.Sarwagi & Co. Pvt. Ltd.**⁵ it was held at Para No.13 that though pre-trial amendments can be allowed on such terms where Court finds just, for once trial commenced the showing of due diligence as per proviso to Order VI Rule 17 C.P.C is the prerequisite. These expressions in fact say the basic requirement of due diligence is to be satisfied, once trial is commenced, though for the pre-trial amendment it can be liberal made subject to other riders.

7(b)(ii) In the later expression of this Court in **Waheeda Begum V. Md.Yakub**⁶ by referring to several expressions including the **Rajkumar Gurawara** supra particularly at para No.24 it was held that as per the expression, it confers jurisdiction on the Court to allow either party to alter or to amend the pleadings at any stage of the suit and on such terms as may be just, provided such amendment seeks determination of the real question and controversy between the parties; that pre-trial amendments are to be allowed more liberally, than those amendments sought to be made after commencement of the

⁵ 2008(14)SCC 364 = AIR 2008 SC 2303

⁶ 2014(3) ALD 361=(2)ALT-640

trial. It also referred **J.Samuel** supra particularly in para No.26 in saying that no application for amendment shall be allowed after the trial has commenced, unless the Court has come to the conclusion that in spite of due diligence, the party could not raise the matter before the commencement of the trial. It also referred the expression in **Rajesh Kumar Agarwal V. K.K.Modi**⁷ that the Court can take note of events subsequent to the filing of the suit, where necessary, to shorten the litigation. It is by referring to the expressions, it was held on the facts in **Waheeda begum** supra that the petitioners could establish that in spite of due diligence they could not raise the matters before commencement of trial and the bar laid down under proviso to Order VI Rule 17 C.P.C thus no way applied and consequently dismissal of the amendment petition by the trial Court is held unjustified.

7(b)(iii) In **Rajesh Kumar Agarwal** supra, it was held further that Courts should allow amendments which are necessary for the purpose of determining the real questions in controversy between the parties provided it does not cause injustice to other side.

7(b)(iv) Coming to delay in seeking amendment whether a ground by itself or deciding of real questions in controversy concerned, it is referring to some of the expressions among other of the Apex Court, in **Andhra Bank V. ABN Amro Bank N.V**⁸ it was held by the Apex Court that, delay by itself is no ground for refusal of

⁷ (2006)4 SCC 385

⁸ AIR 2007 SC 2511

prayer for amendment, as the only question to be considered by Court is whether such amendment would be necessary for decision of the real controversy between the parties in suit and at that stage the Court cannot go into question of merit of amendment. Once trial commenced, amendment sought, to satisfy the requirement of due diligence.

7(b)(v) In **Surender Kumar Sharma V. Makhan Singh**⁹ the Apex Court observed that merely because the amendment sought is belated that does not liable to be rejected on the ground of delay, where Court feels allowing of the application resolves the real controversy between the parties.

7(b)(vi) In **Pankaja V. Yellappa**¹⁰ and **State of A.P. V. Pioneer Builders**¹¹, the Apex Court held that mere delay itself is not a ground to reject the amendment when it results to multiplicity of proceedings.

7(b)(vii) It was held by the Apex Court in **Ramachandra Sakharam Mahajan V. Damodar Trimbak Tanksale**¹² that when the amendment sought for would enable the Court to pin-pointedly consider the real dispute between the parties and thereby help to render a decision more satisfactorily, it ought to be allowed.

⁹ 2009(10)SCC 626

¹⁰ AIR 2004 SC 4102

¹¹ AIR 2007 SC 113

¹² (2007)6 SCC 737

7(b)(viii) The Apex Court in **Chander Kanta Bansal V. Rajinder Singh Anand**¹³ held that in a suit for injunction restraining the defendant from obstructing the lane in the suit property, defendant seeking amendment of written statement after closure of evidence of both sides to file partition agreement that was not brought in the course of evidence and the same when allowed by amendment to bring in evidence tantamounts to retracting what was pleaded in the written statement and said amendment cannot be allowed for lack of due diligence, in saying that while exercise of discretion care should be taken to see that injustice and prejudice of an irremediable character are not inflicted upon the opposite party under pretence of allowing amendment. It was also held that an amendment which appears clearly to be an afterthought to be disallowed.

7(b)(ix) The Apex Court in **Peethani Suryanarayana V. Repaka Venkata Ramana Kishore**¹⁴ held that Court holds power to allow such amendment, provided the application is bonafide and does not cause injustice to either side and does not affect the rights already accrued to the other side. It was on facts in the suit for partition amendment of plaint saying some typographical error is there as to subject matter that requires correction when it causes no prejudice to the so called pendentelite purchasers of suit land by correction of survey Nos.462 and 463 from what plaint originally described of

¹³ AIR 2008 SC 2234 = (2008)5 SCC 117

¹⁴ (2009)11 SCC 329

Survey No.165, when that Survey No.165 is re-assigned as 463 and the mentioning is to correct the typographical mistake. For that conclusion referred **Sajjan Kumar V. Ram Kishan**¹⁵ para-5 holding the amendment sought is for the purpose of bringing to the record the real question in controversy between the parties and refusal to permit the amendment would create needless complications at the stage of execution in the event of the appellant-plaintiff succeed in the suit.

7(b)(x) The Apex Court in *Vidyabai & Ors. v. Padmalatha*¹⁶, held that it is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. The three important factors to be taken into consideration while considering the application for amendment are:

1. Whether the amendment sought for is necessary in determining the real controversy of dispute between the parties?
2. Whether the application for amendment is bona fide?
3. Whether the amendment sought for, if allowed, causes prejudice to the other side which cannot be compensated adequately in terms of money?

7(b)(xi) The Apex Court in the case of *M/s. Revajeetu Builders & Developers v. Narayanaswamy & Sons & others*¹⁷ held as under:
"65. The Courts have consistently laid down that for unnecessary delay and inconvenience, the opposite party must be compensated with costs. The imposition of costs is an important judicial exercise

¹⁵ 2005 (13) SCC 89

¹⁶ AIR 2009 SC 1433

¹⁷ 2009 (10) SCC 84=AIR 2009 SC (Supp) 2897

particularly when the courts deal with the cases of amendment. The costs cannot and should not be imposed arbitrarily. In our view, the following parameters must be taken into consideration while imposing the costs. These factors are illustrative in nature and not exhaustive.

- (i) At what stage the amendment was sought?
- (ii) While imposing the costs, it should be taken into consideration whether the amendment has been sought at a pre-trial or post-trial stage;
- (iii) The financial benefit derived by one party at the cost of other party should be properly calculated in terms of money and the costs be awarded accordingly.
- (iv) The imposition of costs should not be symbolic but realistic;
- (v) The delay and inconvenience caused to the opposite side must be clearly evaluated in terms of additional and extra court hearings compelling the opposite party to bear the extra costs.
- (vi) In case of appeal to higher courts, the victim of amendment is compelled to bear considerable additional costs. All these aspects must be carefully taken into consideration while awarding the costs."

7(b)(xii) The Apex Court relying upon *M/s. Revajeetu Builders supra* held in *State of M.P. Vs. Union of India*¹⁸, *Ashutosh Chaturvedi V. Prano Devi*¹⁹ and *South Konkan Distilleries & Anr. V. Prabhakar Gajanan Naik*²⁰ that though courts have ample power to allow amendment of plaint, said power should be exercised in the interest of justice and to determine the real questions in controversy between the parties and on such terms as may be just, amendment cannot be claimed as a matter of right and court should not also adopt a hyper technical approach but a liberal approach and by

¹⁸ 2011 (12) SCC 268

¹⁹ 2008 (15) SCC 610

²⁰ AIR 2009 SC 1177

compensating other side by costs. In *South Konkan Distilleries supra*, it was held further that whether claim is barred by limitation or not is a mixed question of fact and law, amendment cannot be rejected, but for to decide during trial on merits of that aspect. It was also held particularly at para-11 that Courts must be extremely liberal in granting prayer for amendment, if the court is of the view that if such amendment is not allowed, the party prayed for it shall suffer irreparable loss or injury or injustice.

8. Amendment of pleadings from the above is basically for the purpose of bringing about final adjudication in a lis and to avoid multiplicity of proceedings and shorten litigation and where it is necessary to determine the real controversy. It is in the interest of justice that a suit shall be decided on all points of controversy and accordingly, it is needed that the party shall be allowed to alter or amend their pleadings during the pendency of the suit. According to Order VI Rule 17 of the Code of Civil Procedure, 1908, the Court may allow the amendment at any stage of the proceedings and for such purpose it may impose conditions i.e. in the form of costs or any other condition. The Court has been given discretion in this regard and the mandatory guidelines upon the Court as well as upon the party seeking amendment is that they shall make only such amendments which are necessary for determination of real controversy between the parties to the suit. At the same time, the *Proviso* to Order VI Rule 17

puts a mandate upon the Court not to allow such amendment after the trial has begun (i.e. if issues have been settled), if it finds that the party could have raised the pleadings by due diligence at an earlier point of time. However, the *Proviso* need not be given a very rigid effect in all cases as the same is subject to the discretion of the Court, for procedural law does not come in the way to determine real matters in controversy so to permit for rendering substantial justice between parties and to avoid multiplicity of proceedings and life to litigation and of anticipatory future complications. The main object of the legislation is to enable the Court to allow amendment at any stage and thereby delay itself is not a ground to refuse, but for not to permit where there is by such amendment changes cause of action or tantamounts to withdrawal clear admissions unexplained or amendment plea to introduce is mutually destructive or where claim is time barred and allowing it causes grave prejudice and injustice to rights accrued to other side than by refusal. Even alternative pleas are permissible and in case of plaintiff, to choose one to the other inconsistent, though defendant is entitled to take inconsistent pleas even as alternative defences. The purpose of the *Proviso* cannot thereby do away with the intent of the legislation. Thus, if an application for amendment of pleadings has been filed after trial has begun, the Court will normally be tilted against the applicant, if it could be raised by due diligence at any earlier stage of proceedings. But in proper cases if the point to be amended is very essential to the

suit, the Court may, in the interest of justice and equity, allow the amendment on such conditions as the Court deems fit and proper in the facts and circumstances of the particular case, including as to costs for non showing of due diligence and for delay and latches.

9. From the above propositions and in fact the factual scenario no way requires repetition. Once the bar of limitation, if any, is a mixed questions of fact and law, the amendment cannot be refused, but for left open to the defendants after amendment to raise such plea in the pleadings in the amended portion by saying claim is barred, for the Court ultimately to decide by formulating any specific issue, leave about for declaratory relief on title the limitation is twelve years from Article 65 of the Indian Limitation Act and it is where a declaration not otherwise provided, the limitation is three years as per Article 58 of the Indian Limitation Act and the same position is clarified by this Court in **G.Narayana Reddy v. P.Narayana Reddy**²¹. Further, the Apex Court in Sampath Kumar supra categorically held that the amendment for permanent injunction to a suit for declaration of title and possession will no way change the basic structure of the suit even the amendment sought after eleven years of filing of the suit to avoid multiplicity of proceedings.

10. Having regard to the above and in the result, the revision is allowed by setting aside the dismissal order of the lower Court in I.A.No.535 of 2014, dated 17.01.2017, by allowing the same subject

²¹ 2016 (3) ALT 12

to costs of Rs.3,000/- (Rupees three thousand only) to pay within time fixed by the trial Court to the opposite parties or defendants or their advocate and to carry the amendment with consequential amendment subject to the defendants right to file additional written statement/s.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

13th December 2017.

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