

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P.No.2773 of 2012

ORDER:

Plaintiffs in O.S.No.104 of 2004, on the file of the Court of the Senior Civil Judge, Peddapuram, East Godavari District are the petitioners in the present revision filed under Article 227 of the Constitution of India.

2. In the said suit, petitioners herein filed I.A.No.393 of 2011 under Order 6 Rule 17 of the Code of Civil Procedure, seeking amendment of the plaint by adding the land, admeasuring Ac.0.84 cents, situated in Sy.No.378/1 of Kirlampudi village as Item No.4 in the plaint 'A' Schedule. The said application was resisted by the defendant/respondent herein by filing a counter. The learned Senior Civil Judge, dismissed the said application by way of an order dated 20.04.2011. This revision calls in question the validity and the legal sustainability of the said order.

3. Heard Sri S.Subba Reddy, learned counsel for the petitioners and Sri N.Vijay, learned counsel for the respondent apart from perusing the material available before the Court.

4. Learned counsel for the petitioners contends that the impugned order is erroneous, contrary to law and opposed to the very spirit and object of the provisions of Order 6 Rule 17 of the Code of Civil Procedure; that the learned Judge grossly erred in dismissing the application without properly appreciating the facts and circumstances of the case; that the Court below erred in dismissing the application as belated. Learned counsel for the petitioners takes support of the order of this Court in C.R.P.Nos.1751, 1752 and 1753 of 2016 dated 17.10.2016 to substantiate his contentions.

5. Per contra, learned counsel for the respondent maintains that there is no jurisdictional error nor there is any patent infirmity in the impugned order and that in the facts and circumstances of the case, the learned Senior Civil Judge is perfectly justified in dismissing the application. It is further submitted that in the absence of any proper explanation for delay in filing the application, petitioners are not entitled for any indulgence of this Court under Article 227 of the Constitution of India.

6. In the above background, now the issue that emerges for consideration of this Court is\_ “Whether the questioned order is sustainable and tenable in the eye of law or whether the same warrants any correction by this Court under Article 227 of the Constitution of India?”

7. The provision of law which is germane and relevant for resolving the issue in the present revision is Rule 17 of Order 6 of the Code of Civil Procedure, which reads as follows:

“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 question 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. It is abundantly clear from a reading of the above Rule that the Court is empowered to allow the parties to the lis to alter or amend the pleadings provided the same is essential and necessary for determining the real questions in controversy between the parties at any stage. But the proviso to Rule 17, incorporated by the legislature by Act 22 of 2002 with effect from

01.07.2002 is a departure from the Rule. The said proviso bars and prohibits in clear and unambiguous terms, the entertainment of application for amendment after the commencement of trial. The only exception for the said departure is the existence of due diligence on the part of the person applying for. The laudable object behind incorporating the above said proviso to Order VI Rule 17 is to enable the Courts to resolve the issues expeditiously. Therefore, the consideration of the application for amendment should be inconsonance with the said object, but should never be in the direction of frustrating the intention of the legislature. The issue in the present revision is required to be examined in the light of the above aspects.

9. In the instant case, admittedly after commencement of trial in the suit, plaintiffs/petitioners herein filed the present application under Order VI Rule 17 of the Code of Civil Procedure. Therefore, in view of clear and unambiguous language of the proviso to order VI Rule 17, it is incumbent and obligatory on the part of the petitioners to mandatorily comply with the second limb of the proviso i.e., despite due diligence they could not raise the matter before the commencement of trial.

10. In the affidavit filed in support of the present application, the plaintiffs/petitioners herein stated that after adducing the evidence, they noticed the land admeasuring Ac.0.84 cents in Sy.No.378/1 of Kirlampudi and that they were advised to file an application for claiming the share in the said property also. According to the petitioners, the property covered by Ex.A.9 stands in the name of the defendant and admittedly the plaintiffs/petitioners herein obtained Ex.A.9 as long back as on 15.09.2006. No plausible explanation is forthcoming as to why the petitioners herein maintained absolute silence since the said date and as to why they did not move immediately by filing application. Yet another reason assigned by the

petitioners in the grounds of C.R.P is that during the course of cross-examination on 09.02.2011, it came to light that the present property belongs to the defendant. The said reason, though it is raised for the first time in the present C.R.P, in the considered opinion of this Court, cannot be sustained and by any stretch of imagination, it cannot be said that despite due diligence petitioners herein could not raise this issue earlier. In fact, in the order under challenge, the learned Senior Civil Judge noted that the suit was coming up for arguments since 2010 onwards and when the Court insisted for addressing the arguments, the present application was filed. The Court below also recorded a finding that there was uncondonable negligence on the part of the petitioners in filing the present application for amendment though the petitioners had knowledge of the instant property in the year 2006 itself. The element of due diligence, which is a condition precedent for availing the benefit in terms of second limb of proviso to Rule 17 of Order 6, in the considered opinion of this Court, is conspicuously absent in the case on hand. It is a settled and well established principle of law that unless the order impugned suffers from jurisdictional error and patent perversity, the invocation of jurisdiction of this Court under Article 227 of the Constitution of India is impermissible.

11. In the facts and circumstances, the judgment sought to be relied upon by the petitioners herein would not render any assistance to the petitioners. It is pertinent to refer to the judgment of this Court in the case of *VEERISSETTY VENKATA SUBBA RAO v. BOGALA GANGADHARA REDDT<sup>1</sup>* wherein this Court categorically held that in the absence of due diligence the applications for amendments should not be allowed as the same would frustrate the very purpose of amendment to Order 6 Rule 17. Therefore, this Court does not find any merit in the present revision.

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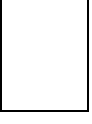
<sup>1</sup> 2017 (3) ALD 11

12. Accordingly, the revision is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:22.09.2017  
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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