

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.5442 OF 2015

ORDER:

This petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.1906 of 2014 in O.S.No.480 of 2012 dated 15.10.2015 passed by the III Additional Chief Judge, City Civil Court, Hyderabad, allowing an application filed under Order VI Rule 17 C.P.C, to amend the pleadings in the plaint.

The petitioners herein are the respondents (defendants) and the respondents herein were the petitioners (plaintiffs) before the Trial Court. For the sake of convenience, they will hereinafter be referred as petitioners and respondents, as arrayed before the Trial Court.

The petitioners filed petition under Order VI Rule 17 C.P.C seeking permission to amend the pleadings, as mentioned in the petition, alleging that the suit was filed for cancellation of Registered Will dated 16.07.1997, executed by their father Mr.Boyi Bhimanna, during his lifetime. The counsel who was engaged initially was changed, as he was unable to bestow sufficient time on the suit and appointed the present counsel, who, in turn, advised the petitioners to seek amendment of pleadings such as suit for cancellation of Will Deed, partition and separate possession of suit schedule properties covered by the Will. The petitioners submitted that, if the Will is declared as null and void and cancelled by the Court, the property will become joint property of Hindu Coparcenary and in such case, it is essential to seek

partition into six equal shares among the petitioners and respondents 2 & 3. The petitioners submitted that, while respondents 2 & 3 are illegitimate children of the father of the petitioners, respondent no. 1 is not legally wedded wife of the petitioners' father and thereby, respondent no. 1 is not entitled to claim any share in the property. It is further submitted that, as the Trial in the suit has not been commenced, the petitioners are entitled to seek amendment the pleadings i.e. plaint and the proposed amendment would not cause any prejudice to the petitioners, thereby, prayed to permit the petitioners to amend the plaint incorporating several paragraphs. It is to be noticed that the proposed amendment is running into four pages, including substitution of various schedules at page no.10 of the plaint and other consequential amendments.

The first respondent filed counter, denying material allegations. While admitting filing of O.S.No.480 of 2012 for cancellation of Registered Will dated 16.07.1997, pleaded ignorance about the inability of the previous counsel for the petitioners to bestow his attention and advise given by the present counsel for the petitioners to amend the plaint. In the counter, the first respondent submitted that the suit was valued under Section 36 read with Section 47 of A.P. Court Fee and Courts Valuation Act. Further, the written statement was also filed by the first respondent raising a specific contention that the suit was not valued properly and the proposed amendment would change the nature of the suit. It is submitted in the written statement that the suit cannot be said to be an administrative suit under Section 36

of APCF & SV Act to pay the fixed Court fee of Rs.706/-. Thereupon, when the matter reached this Court regarding valuation of the suit this Court passed an order in C.R.P.No.1522 of 2016 issuing a specific direction for payment of Court fee by the petitioners. But, without complying the direction of this Court in C.R.P.No.1522 of 2016, the petitioners now, with an intention to avoid payment of Court Fee, by frustrating the order, filed the present revision petition. It is also further contended that the Trial has already been commenced on the day when issues were framed and in view of the bar under the proviso to Order VI Rule 17 C.P.C, the amendment cannot be allowed and prayed to dismiss the petition.

The Trial Court, after considering rival contentions, ordered I.A.No.1906 of 2014 dated 15.10.2015 allowing amendment of the pleadings in the plaint, incorporating various reliefs specified in the petition.

Aggrieved by the said order in I.A.No.1906 of 2014 dated 15.10.2015, the respondents before the Trial Court, preferred the present revision petition on various grounds.

During hearing, learned Senior Counsel appearing for the petitioners/respondents Sri B. Venkata Rama Rao contended that ascertaining that the petitioners/respondents are in actual physical possession of the property and by paying fixed Court fee of Rs.200/-, the present petition is filed to amend the pleadings in the plaint to overcome the order in C.R.P.No.1522 of 2012 and if such amendment is allowed, it would frustrate the order in

C.R.P.No.1522 of 2012. Therefore, on this ground, it is prayed that such amendment cannot be allowed.

It is also contended by the learned counsel for the petitioners/respondents that the suit is pending since 2012. After framing issues, the suit is being posted from time to time for trial, but conveniently the respondents/petitioners filed petition under Order VI Rule 17 C.P.C and avoided to proceed with the trial of the suit. When issues were framed, the trial is deemed to have been commenced, thereby the respondents/petitioners are not entitled to seek relief to amend the pleadings in the plaint as a matter of course, except on proof that they exercised due diligence. It is further contended that inspite of it, the respondents/ petitioners could not have brought these facts to the notice of the Court by way of amendment to the pleadings in the plaint. But, no such plea was raised in the entire affidavit, except making a bald allegation that due to change of the counsel, it necessitated to amend the pleadings in the plaint and on such ground, the Court cannot permit the plaintiffs to amend the pleadings in the plaint. It is contended by the learned counsel for the petitioners/ respondents that the Trial Court did not consider this contention in proper perspective and committed an error in allowing the petition for amendment under Order VI Rule 17 C.P.C.

Learned Senior Counsel for the petitioners/respondents, in support of his contention drawn attention of this Court to the judgments of the Supreme Court reported in **Salem Advocate Bar Association, Tamil Nadu v. Union of India¹, Rajkumar Guruwara (dead) through LRs v. S.K. Sarwagi and Company**

¹ (2005) 6 Supreme Court Cases 344

Private Limited and another² and Revajeetu Builders and Developers v. Narayanaswamy and Sons and others³ and prayed for dismissal of I.A.No.1906 of 2014 in O.S.No.480 of 2012 dated 15.10.2015 passed by the III Additional Chief Judge, City Civil Court, Hyderabad.

Per contra, learned counsel for the respondents/petitioners Sri G. Purushotham Rao contended that the proposed amendment would not change the nature of suit and it would not take away the valuable right that accrued to the petitioners herein/respondents or withdraw any admission made in the pleadings, thereby, the amendment cannot be rejected. It is contended that the trial in this matter has not been commenced and framing of issues by itself is not commencement of trial. Therefore, the proviso to Order VI Rule 17 C.P.C will have no application to the present facts of the case. Even otherwise, when the respondents/ petitioners are able to explain the reason for their failure to take steps to amend the plaint, despite exercise of due diligence, the amendment cannot be rejected, which is essential to decide the real controversy between the parties.

Learned counsel for the peititoners/respondents placed reliance on **Rameshkumar Agarwal v. Rajmala Exports Pvt. Ltd and ors⁴, Baldev Singh v. Manohar Singh⁵, Rafeeq Ahmed v. Hameed Ahmed Khan and others⁶** and judgment of Karnataka High Court in **Manjunath Gopalkrishna Bhat v. Ganapati**

² (2008) 14 Supreme Court Cases 364

³ (2009) 10 Supreme Court Cases 84

⁴ AIR 2012 SUPREME COURT 1887

⁵ LAWS (SC)-2006-8-5

⁶ 2006 (3) ALD 660

Gopalkrishna Bhat⁷ and prayed for dismissal of the revision, affirming the order passed by the Trial Court in I.A.No.1906 of 2014 in O.S.No.480 of 2012.

Considering rival contentions and perusing the material available on record, including the order under challenge in I.A.No.1906 of 2014 in O.S.No.480 of 2012, the point that arose for consideration is as follows:

“whether the proposed amendment would change the nature of suit and takes away the valuable right that is accrued to the petitioners herein/respondents, withdrawing admission, if any made. If not, whether leave can be granted to the respondents/petitioners to amend the plaint after framing issues in the suit by the Trial Court.”

P O I N T:

This civil revision petition is filed under Article 227 of the Constitution of India. Such jurisdiction can be exercised only in limited circumstances. Before deciding the real controversy in dispute, I would like to discuss scope of jurisdiction of this court under Article 227 of the Constitution of India. This court can exercise revisional jurisdiction under Article 227 of the Constitution of India in limited circumstances and nature of the jurisdiction is supervisory over the subordinate courts or the tribunals under the control of the High Court. The power of revision under Article 227 of the Constitution of India is limited to find out whether the order under challenge, passed by the subordinate court or tribunal within their jurisdictional limits and

⁷ 1998 (6) KarLJ 95

the main intention of exercising both administrative and judicial control under Article 227 of Constitution of India is to keep them within the bounds of their jurisdiction and not to allow them to transgress from their jurisdictional limits, but not otherwise. The Court can exercise jurisdiction under Article 227 of the Constitution of India under the following circumstances:

- “a) When the inferior court assumes jurisdiction erroneously in excess of power.
- b) When refused to exercise jurisdiction.
- c) When found an error of law apparent on the face of record.
- d) Violated principles of natural justice.
- e) Arbitrary or capricious exercise of authority or discretion.
- f) Arriving at a finding which is perverse or based on no material.
- g) A patent or flagrant error in procedure.
- h) Order resulting in manifest injustice.
- i) Error both on facts and law or even otherwise.”

Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India in the following circumstances:

- "a) Where the only question involved is one of interpretation of deed;
- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;
- c) To correct erroneous exercise of jurisdiction, as a Court of revision;
- d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;
- e) To correct an error of law, not being an error apparent on the face of the record;
- f) To interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;

- g) The Court shall not interfere on a merely technical ground which would not advance substantial justice."

Article 227 of Constitution of India deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction and such power can also be exercised suo motu. It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in **State (N.C.T. Of Delhi) v. Navjot Sandhu@ Afsan Guru**⁸ that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds.

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

⁸ (34)2005 (3) ALT (CrI.) 125 (SC)

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 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 proviso to Rule 17 of Order VI of C.P.C, an interdict is created, according to it, 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.

It is pertinent to note that the respondents/petitioners filed suit for various reliefs which are as follows:

- a. to declare the will dated 16.07.1997 executed by Dr. Boyi Bheemannna is illegal and the same be cancelled
- b. for the cost of the suit.
- c. To grant such other relief or reliefs as the Hon'ble Court may deem fit in the circumstances of the case.

Virtually, the relief claimed in the plaint initially falls under Sections 34 and 31 of the Specific Relief Act. If, such relief is granted, declaring the Will as illegal and cancelled, the property would form part as joint family property, thereby, the respondents/plaintiffs are entitled to claim partition of the property as per the provisions of Hindu Succession Act, being the legal heirs of Dr. Boya Bhimanna. Therefore, the proposed amendment is only for partition of the property which is

consequential to the relief in Clause (a) to paragraph V to avoid multiplicity of litigation.

The intention of the Legislature in incorporating Order VI Rule 17 C.P.C is to avoid multiplicity of litigations, permitting the parties to amend their pleadings appropriately.

The Apex Court in **A. Krishna Rao v. A. Narahari Rao and others⁹**, while dealing with an application under Order VI Rule 17 of C.P.C., the Apex Court 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."

Thus, in view of the principle laid down by the Apex Court in the above judgment, the Court can permit amendments to avoid multiplicity of the proceedings.

The relief claimed in I.A.No.1906 of 2014 filed by the respondents/petitioners to amend the pleadings in the plaint, though independent, they are consequential to the relief claimed originally in the plaint. Virtually, it would not change the nature of the suit and would not take away valuable right that is accrued to the respondents/petitioners, if any, or withdrawing any unequivocal admission in the plaint. In such case, the amendment of pleadings under Order VI Rule 17 C.P.C which is purely

⁹ 2015 (1) ALT 113

discretionary can be allowed, subject to proviso to Order VI Rule 17 C.P.C, as amended by Act 22 of 2002.

The main endeavour of the learned counsel for the petitioners/respondents before this Court is that, in O.S.No.480 of 2012, though the witnesses were not examined as part of the trial in the main suit, the trial has already been commenced as issues were framed long back. In such case, it is incumbent upon the respondents/petitioners to explain that, despite exercise of due diligence, the respondents/petitioners could not bring out certain facts by way of amendment to the plaint. But, no explanation was offered in the entire affidavit, except making a bald allegation that due to change of counsel, which necessitated amendment to the plaint, as the earlier counsel could not bestow his attention on the suit. In such case, the amendment cannot be allowed.

Whereas, learned counsel for the respondents/petitioners would contend that the trial would commence only when the petitioners/respondents filed their affidavit in lieu of examination-in-chief under Order XVIII Rule 4 C.P.C. But, framing of issues by itself would not amount to commencement of trial.

Learned counsel for the petitioners placed reliance on **Baldev Singh**⁵ case, wherein, the Apex Court while deciding a similar issue with regard to commencement of trial, observed that, it is well settled by various decisions of this Court as well as the High Courts in India that Courts should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. In this connection, reference was made to a decision of the Privy Council

in **Ma Shwe Mya v. Maung Mo Hnaung**¹⁰ in which the Privy Council observed as follows:

"All rules of courts are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that full powers of amendment must be enjoyed and should always be liberally exercised, but nonetheless no power has yet been given to enable one distinct cause of action to be substituted for another, nor to change by means of amendment, the subject-matter of the suit."

In **Baldev Singh**⁵ case, the Apex Court in the concluding paragraphs held as follows:

"Before we part with this order, we may also notice that proviso to Order 6 Rule 17 of the CPC provides that amendment of pleadings shall not be allowed when the trial of the Suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the Suit. From the record, it also appears that the Suit was not on the verge of conclusion as found by the High Court and the Trial Court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted herein after, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 of the CPC which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings."

It appears from the principle laid down in **Baldev Singh**⁵ case that the issues were framed in the Trial Court after completion of pleadings by both the parties in the suit and after amendment of C.P.C by Act 22 of 2002, posting the suit for filing documents or list of documents is deleted and according to Order VII Rule 14 (1) & (2) C.P.C and Order VIII Rule 1 (a) (1) & (2) C.P.C, the parties to the suit have to file the list of documents which they are relying upon and sued on, along with their pleadings and if any

¹⁰ (AIR 1922 P.C. 249)

document is not available, they have to state in whose possession the document is available. Therefore, posting the suit for filing of documents, after framing issues is totally taken away by Act 22 of 2002. In any view of the matter, it is clear from the law declared by the Apex Court that commencement of Trial as used in the proviso to Order VI Rule 17 C.P.C is only in the limited sense as meaning the final hearing of the suit, examination of witness, and advancing arguments. Therefore, framing of issues is not the starting point of commencement of trial. In the suit before the Trial Court, which is the subject matter of the present petition, issues were admittedly framed by the Trial Court, the evidence of the respondents/ plaintiffs has not yet commenced. In such case, it is difficult to hold that the trial has been commenced in view of the law declared by the Apex Court in the judgment referred supra.

The Court can exercise its discretion in view of the law declared by the Apex Court in **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others**¹¹, wherein the Apex Court laid down certain guidelines for granting or denying relief under Order VI Rule 17 of CPC viz., 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 terms of money;

¹¹ 2009(8) SCJ 401

4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally 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 VI Rule 17. These are only 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.

24. The Apex Court further held that,

"amendment application to be filed if necessary 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 commenced despite exercising due diligence, the Court can allow such amendment. The factum of exercising due diligence depends upon circumstances."

In view of the guidelines laid down by the Apex Court in **Revajeetu Builders and Developers**³ case, the Court has to examine whether the proposed amendment would fall within the parameters laid down by the Apex Court and if the proposed amendment is not permissible within the parameters laid down, the Court is bound to reject the amendment.

Learned counsel further drawn attention of this Court in **Rajkumar Guruwara**² case, wherein, the Apex Court had an occasion to deal with the proviso to Order VI Rule 17 C.P.C for

amendment of plaint after commencement of trial and its permissibility. In paragraph 13 of the judgment, the Apex Court held that, to put it clear, Order VI Rule 17 C.P.C. confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As rightly pointed out by the High Court in the former case, the opposite party is not prejudiced because he will have an opportunity of meeting the amendment sought to be made. In the latter case, namely, after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso. But, in the said judgment, no guidelines were laid down by the Supreme Court as to the date of commencement of trial, but concluded that only after completion of evidence, prejudice to the opposite party may arise and in such an event, the proviso to Order VI Rule 17 C.P.C is required to be considered by the Courts while exercising power under Order VI Rule 17 C.P.C.

If the principle laid down in **Rajkumar Guruwara²** case is applied to the present facts of the case, no prejudice would be caused to the petitioners/respondents, if the amendment is allowed, since the evidence of the respondents/plaintiffs is not yet commenced. The cumulative effect of the judgment of Apex Court

in **Baldev Singh**⁵ case, is that pre-trial amendment can be permitted and the commencement of trial is used only in limited sense. In addition to that, if amendment is allowed before completion of evidence of the petitioners/respondents, it would not cause any prejudice, since they will have an opportunity to put-forth their defence on the proposed amendment of the plaint and such amendments are liable to be allowed.

Learned counsel for the petitioners/respondents contended that, the intention of the legislature in adding proviso to Order VI Rule 17 C.P.C is to curtail exercise of discretionary power of this Court in allowing amendments after commencement of trial to some extent, unless the respondents/petitioners in this matter shown to have exercised due diligence, they could not bring those facts by way of amendment to the plaint.

Learned counsel for the petitioners/respondents placed reliance on **Salem Advocate Bar Association, Tamil Nadu**¹, wherein the Apex Court while dealing with amendment to various provisions of C.P.C by Act 22 of 2002 w.e.f.01.07.2002, in paragraph 26 of the judgment, highlighted the purpose of incorporating proviso by Act 22 of 2002 and held that the proviso to some extent curtails absolute discretion of Court to allow amendment at any stage. For amendments sought after commencement of trial, it has to be shown that inspite of due diligence amendment sought could not have been sought earlier and the object is to prevent frivolous applications filed to delay trial. Therefore, there is no illegality in the proviso to Order VI Rule 17 C.P.C. Therefore, the purpose of proviso to Order VI Rule 17

C.P.C is to prevent the Courts from exercising absolute discretion in allowing amendment, as a matter of routine.

Similarly, in **Rajkumar Guruwara**² case, the Apex Court laid down the following conditions to grant application for amendment subject to certain conditions:

- (i) when the nature of it is changed by permitting amendment;
- (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party;
- (iii) when allowing amendment application defeats the law of limitation.

In the present facts of the case, the suit was filed by the respondents/petitioners initially for declaration and for cancellation of the Will and such reliefs are governed by Sections 34 & 31 of Specific Relief Act. But, now, the respondents/petitioners are seeking partition of the property and other consequential reliefs in addition to the original reliefs. This proposed amendment is only to avoid multiplicity of the proceedings by filing a suit for partition in the event of granting relief claimed in the plaint initially. Therefore, the proposed amendment would not change the nature of the claim and would not result in introducing new cause of action and it would not cause any prejudice to the petitioners/respondents. Similarly, the proposed relief is not barred by limitation. Even otherwise, the amendment will come into effect only on the date when the amendment is permitted, in view of Section 21 of Limitation Act.

Therefore, it is for the parties to raise plea of limitation, since the proposed amendment is not *prima facie* barred by limitation.

Learned counsel for the petitioners/respondents also relied on **Revajeetu Builders and Developers**³ case, which I referred in the earlier paragraphs. Even the guidelines laid down in **Revajeetu Builders and Developers**³ case are identical to the guidelines laid down in other judgments also.

The following observations are culled out by applying the guidelines laid down by the Supreme Court in **Revajeetu Builders and Developers**³ case to the present facts of the case.

The first guideline is ***whether the amendment sought is imperative for proper and effective adjudication of the case?***

In the present case, though the amendment is not imperative for adjudication of the claim, it would prevent multiplicity of the proceedings to claim separate relief for partition in the event of granting relief claimed in the plaint. It would not only save time and expenses of the parties, but also save valuable time of the Court, since such amendment would not change the nature of the suit. Therefore, allowing amendment by the Court by following guideline no.1 cannot be faulted.

The second guideline is ***whether the application for amendment is bonafide or malafide?***

Nothing is stated by the petitioners/respondents that it is a malafide amendment, except to contend that to avoid payment of Court fee, as directed in C.R.P.No.1522 of 2012, the present civil

revision petition is filed. But allowing the proposed amendment would not enure any benefit to the respondents/petitioners to avoid payment of Court fee, as directed by this Court and the respondents are still liable to comply with the Court directions issued in C.R.P.No.1522 of 2012, as it relates to relief initially claimed in the plaint. But, on account of such proposed amendment, the respondents/petitioners cannot avoid their liability to pay Court fee in compliance of the direction issued by this Court. Therefore, it is not a ground to reject the amendment.

The third guideline is ***whether prejudice would be caused to the plaintiffs?***

In view of the judgment referred above, no prejudice would be caused, since the evidence of respondents/petitioners is not yet commenced.

Similarly, under guideline no.4, the Court has to see ***whether refusal of amendment would lead to injustice or multiple litigations.***

The respondents/petitioners claimed additional relief of partition of the property in the event of granting the relief of declaration and cancellation of the Registered Will dated 16.07.1997. If it is refused, it would multiply the litigation as the respondents/petitioners have to file another suit for partition in the event of granting the relief claimed initially in the plaint. Hence, to avoid multiple litigations, the Trial Court rightly permitted to amend the plaint.

The fourth guideline is ***whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case?***

The proposed amendment in the present facts of the case would not change fundamentally or constitutionally the nature and character of the suit and the original character remains as it is. But, the additional relief is a consequence of granting the primary relief claimed in the plaint.

I have already discussed with regard to bar of limitation and *prima facie* the proposed amendment is not barred by limitation.

Hence, even by applying the principles laid down in the above judgments, it is difficult for me to conclude that the claim of the plaintiffs is barred by limitation *prima facie* and the order passed by the Trial Court in I.A.No.1906 of 2014, even if tested with reference to the guidelines laid down by the Apex Court in **Revajeetu Builders and Developers**³ case, is in accordance with law and did not suffer from any legal infirmity, warranting interference of this Court.

Learned counsel further placed reliance on judgments of this Court in **Alimineti Sadanandam v. Daripelli Narayana Charyulu and others**¹², **Rafeeq Ahmed v. Hameed Ahmed Khan and others**¹³ and **G.S. Prakash v. Polasa Hanumanlu**¹⁴, where the principle laid down in these judgments is identical to the law laid down by the Apex Court in the judgments referred supra.

¹² 2007 (3) ALT 624

¹³ 2006 (3) ALD 660

¹⁴ 2015 (2) ALT 594

In view of the law declared by the Apex Court in the judgments referred supra, examination of the law declared by this Court is unnecessary.

Viewed from any angle, the proposed amendment as discussed above, would not change the nature of the suit and take away valuable right that accrued to the petitioners/respondents and will not withdraw any admission and not barred by limitation *prima facie*. Therefore, I find no ground to interfere with the findings of the Trial Court and the order of the Trial Court is free from any illegality.

In the result, the civil revision petition is dismissed. However, the respondents/petitioners are liable to comply with the order passed by this Court in C.R.P.No.1522 of 2012 and in case, the respondents failed to pay the Court fee after proper valuation of the suit, the petitioners are at liberty to move appropriate application under Order VII Rule 11 C.P.C.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date: -07.2017

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