

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 242 of 2017

ORDER:

1) Aggrieved by the order, dated 03.11.2016, passed in I.A.No.379 of 2016 in O.S.No.559 of 2011 on the file of the I Additional Junior Civil Judge, Chittoor, wherein an application filed under Order VI Rule 17 of C.P.C. seeking permission of the Court to amend the plaint was rejected, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India,.

2) The petitioner/plaintiff filed the above suit seeking permanent injunction restraining the defendant, his men and agents from in any way interfering with his peaceful possession and enjoyment of the plaint schedule property. When the said suit was posted for further evidence of plaintiff, the petitioner/ plaintiff filed I.A.No.379 of 2016 seeking amendment of the plaint on the ground that pursuant to a will executed by his grand father Chinnaswamy Naidu, he got succeeded to the suit schedule property and was advised to amend the plaint for declaration of his title over the suit schedule property.

3) A counter came to be filed by the respondent/ defendant denying the execution of will by Chinnaswamy Naidu. It is his case that he is the legal heir of Chinnaswamy Naidu and the District Judge, Chittoor, has also issued succession certificate in his favour

vide certificate dated 27.04.2010. It is also stated that the alleged will is forged document and the petitioner has no right or title over the suit schedule property. It is also stated that during cross examination, the petitioner made certain statements with regard to the alleged will and the present petition came to be filed to fill up the said lacunas.

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 would submit that the petitioner initially filed only a suit seeking permanent injunction but he was advised to amend the plaint seeking declaration of title as the petitioner has acquired the said property through a will dated 12.11.2007 executed by Chinnamswamy Naidu.

6) 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.”

7) A perusal of the plaint would show that the petitioner/ plaintiff acquired the suit schedule property through a will dated 12.11.2007. The respondent/ defendant filed his written statement on 30.12.2011 denying the execution of will. But the petitioner/ plaintiff did not take any steps at the earliest point of time but after lapse of five years and that too when the suit is posted for further evidence of plaintiff, the petitioner came up with this petition to amend the plaint seeking declaration of title.

8) In *Revajeetu Builders and Developers v. Narayanaswamy and sons and others*¹ the Apex Court, after analysing critically the point in issue, deduced the following basic principles to be taken into consideration by the Courts, 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;
- 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

¹ (2009) 10 SCC 84

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.

9) In *P.A.Jayalakshmi v. H.Saradha and others*², while dealing with Order VI Rule 17 of C.P.C. the Apex Court held that it is 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. However, proviso appended to Order VI Rule 17 of C.P.C. restricts the power of the Court. It puts an embargo on the exercise of its jurisdiction. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction to allow the amendment of the plaint.

10) As per proviso to Order VI Rule 17 of C.P.C., no amendment can be permitted by the Court, after the trial has commenced, unless the Court comes to a conclusion that in spite of due diligence the party could not have raised the plea before the commencement of trial.

11) In the instant case no explanation is forth coming as to why the petitioner came to the Court at a belated stage, that too when the suit is posted for further evidence. Apart from that, originally the suit was filed for permanent injunction and now the amendment is for “declaration of right and title of the petitioner

² (2009) 14 SCC 525

over the property and consequential injunction”, which alters the nature of the suit itself.

12) In view of the proviso to Order VI Rule 17 of C.P.C. and the judgments referred to above, I do not find any illegality or irregularity in the order passed by the trial Court.

13) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed.

30.03.2017
gkv



JUSTICE C. PRAVEEN KUMAR