

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION Nos.364 AND 366 OF 2011

COMMON ORDER:

These civil revision petitions, under Article 227 of the Constitution of India, are filed challenging the legality and propriety of the orders dated 13.08.2010 in I.A. Nos.3084 of 2007 and 1856 of 2006 in O.S. No.306 of 1997 passed by the V Additional Senior Civil Judge (Fast Track Court), Ranga Reddy District, allowing the interlocutory applications, permitted the respondents 1 to 5 herein to amend the plaint as claimed in the petitions, on various grounds.

02. The grounds urged in both the civil revision petitions are one and the same. Therefore, to avoid repetition, I find that it is expedient to decide these civil revision petitions by common order.

03. The parties will hereinafter be referred to as arrayed before the trial court, for convenience.

04. The petitioners/plaintiffs filed suit for declaration of the action of defendants 1 to 4 in executing sale deed bearing Nos.8/1994 dated 11.11.1994, 9/1994 dated 09.11.1994, 10/1994 dated 14.11.1994 and getting them registered in the office of the Sub-Registrar, Kukatpally, conveying items 1, 2 and 3 in favour of defendants 5 to 8, as fraudulent, illegal, unauthorized and unlawful, opposed to agreement of sale dated 28.12.1991 and opposed to the pleadings as contained in the plaint in O.S. No.16 of 1992 on the file of District Munsiff (West & South) Ranga Reddy District at Saroor Nagar, for cancellation of sale deeds and also for permanent injunction restraining defendants 5 to 8 from

executing another sale deed or agreement of sale or deed of mortgage or any document.

05. Later, the petitioners filed interlocutory applications, sought permission to substitute the document numbers mentioned in the plaint as Certified Copy No.8 of 1994 dated 11.11.1994 with the registered document actual number 1676 of 1994 dated 11.11.1994, Certified Copy No.9 of 1994 dated 09.11.1994 with the registered document actual number 1700 of 1994 dated 09.11.1994, Certified Copy No.10 of 1994 dated 14.11.1994 with the registered document actual number 1714 of 1994 dated 14.11.1994, and document No.1676 of 1994 dated 11.11.1994 with the registered document actual number 1718 of 1994 dated 18.11.1994 (vide I.A. Nos.1856 of 2006).

06. Those interlocutory applications were allowed by the trial court, but still there is a mistake in the amended portion of the plaint where instead of mentioning actual number on the registered document, they mentioned the certified copy number on the registered document and its date.

07. It is contended by the petitioners that the certified copies of the registered documents were handed over to their counsel to seek for cancellation of the registered sale deeds on various grounds, but the counsel, instead of mentioning registered documents numbers, mentioned the certified copy numbers of the documents and it is purely mistake of the counsel. Therefore, sought for amendment of plaint under Rule 17 of Order VI of the Code of Civil Procedure, 1908 (for short 'CPC').

08. Respondents 5 to 8 filed counter denying the material allegations made in the affidavit filed in support of the petitions, while contending that earlier the petitioners filed similar application for amendment of the plaint vide I.A. No.1400 of 2003 under Rule 17 of Order VI of CPC, got the plaint amended, and again after two years these petitions are filed. Therefore, the court cannot exercise discretion to order amendment, at this stage, after commencement of the trial, and prayed for dismissal of the petitions.

09. Upon hearing argument of both the counsel, the trial court passed the orders under challenge dated 13.08.2010 allowing the petitions on the ground the petitioners filed suit for cancellation of four sale deeds executed by respondents 1 to 4 in favour of respondents 5 to 8 and the present petitions are filed under Rule 17 of Order VI read with Section 151 CPC and Rule 28 of Civil Rules of Practice, for substituting the actual document numbers in place of certified copy numbers of the documents which are sought to be cancelled, the proposed amendment would not change the case of the petitioners.

10. Aggrieved by the orders passed by the V Additional Senior Civil Judge (FTC) Ranga Reddy District, the respondents 5 to 8 filed present civil revision petitions, on the ground the applications under Rule 17 of Order VI of CPC cannot be allowed by exercising discretion of the court unless there is any justifiable cause, but the trial court allowed the petitions only on the ground the proposed amendment would not change the nature of the suit. The conclusion arrived by the trial court is without any basis and

prayed this court to set aside the orders passed by the trial court exercising power under Article 227 of the Constitution of India.

11. During hearing, learned counsel for the respondents 5 to 8 would contend that the conclusion arrived by the trial court that the proposed amendment would not change the nature of the suit is unfounded, not based on any material or the law declared by any court. Moreover, the suit was filed in the year 1997 and the petitioners successfully dragged the matter, even after commencement of trial, earlier they filed I.A.No.1400 of 2003 for the same relief and the same was allowed. Again the petitioners committed the same mistake and sought for amendment and filing earlier application with incorrect details amounts to negligence on the part of the petitioners and such amendment cannot be allowed unless the petitioners established that despite exercise of due diligence he could not have raised the matter before the commencement of trial, and that amendment would change the nature of the suit, that too after commencement of the trial the amendment of the plaint cannot be allowed in view of the Proviso to Rule 17 of Order VI of CPC substituted by Act 22 of 2002 and prayed to set aside the orders passed by the trial court.

12. Whereas the learned counsel for the petitioners would contend that the mistake committed by the counsel appeared on behalf of the plaintiffs before the trial court. The counsel negligently mentioned certified copy numbers of the documents. Therefore, for the mistake of counsel, the party shall not be put to loss and in such case, the court can exercise its discretion in allowing such amendment to do complete justice to the parties

before it and prayed to confirm the orders passed by the trial court dismissing these civil revision petitions.

13. Considering rival contentions, perusing the material available on record, the sole point that arise for consideration is thus,

"Whether the proposed amendment would change the nature of the suit? If not, whether the proposed amendment be allowed at this stage?"

IN Re. POINT:

14. These two civil revision petitions are 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 about the 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 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.”**

15. 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."**

16. 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**¹ that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

17. 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.

18. I.A. Nos.1856 of 2006 and 3084 of 2007 were filed before the trial court, sought permission to amend the plaint under Rule 17 of Order VI of CPC. Upon hearing the argument of both the counsel, the trial court allowed the petitions.

19. Undoubtedly, the suit was filed for the relief of declaration and other consequential reliefs, later the petitioners filed interlocutory applications under Rule 17 of Order VI of CPC

¹ (34)2005 (3) ALT (CrI.) 125 (SC)

seeking amendment of the plaint substituting actual registered document numbers in place of certified copy numbers of the registered documents allegedly executed in favour of respondents 5 to 8 and on the top of the registration extract of the document, certified copy number was mentioned instead of mentioning registration number of the document.

20. The petitioners though literates, their counsel has prepared the pleadings on their instructions and it is for the counsel to mention the actual registered document number at appropriate place in the petition to amend the plaint appropriately, but due to negligence, the counsel mentioned certified copy number of the document instead of mentioning registered document number. Therefore, it is a sheer negligence on the part of the counsel. The negligence of counsel is not attributable to the party so as to deny the relief which the petitioners are legitimately entitled. Therefore, the trial court can exercise discretion which conferred on it in allowing such applications.

21. According to Rule 17 of Order VI of CPC, 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 to allow amendment petitions under Rule 17 of Order VI of CPC are well settled; they are; the amendment shall not alter the basic structure or nature of the claim and that the amendment shall not alter 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 amendment to Rule 17 of Order VI of CPC an interdict is created to allow such amendments 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. In view of the proviso, it is for the petitioners to satisfy the court that they exercised due diligence but could not take steps to raise such plea before commencement of trial in the suit before the trial court. Allowing amendments prior to commencement of trial is a matter of routine. The petitioners, who seek permission to amend the plaint after commencement of trial, have to establish that, despite due diligence, they could not raise such plea.

22. In the present case, the reason assigned by the petitioners is that they handed over the certified copy of the registered documents, which are sought to be annulled or cancelled, to their counsel and he prepared affidavit and the petition mentioning certified copy numbers of the registered documents instead of mentioning registered document numbers. The documents produced before the court clearly disclosed that the certified copy number was mentioned on the top of the document, whereas the registered number was not mentioned on the first page of the document. But, by exhibiting sheer negligence, the counsel mentioned certified copy number instead of registered document number, such negligence is attributable to the counsel and not to the party, and filing I.A. No.1400 of 2003

seeking permission to amend the plaint itself discloses that the petitioners exercised due diligence in seeking amendment of the plaint, to annul or cancel the registered document numbers 1676 of 1994 dated 11.11.1994, 1700 of 1994 dated 09.11.1994, 1714 of 1994 dated 14.11.1994 and 1718 of 1994 dated 18.11.1994, but, on account of the mistake of the counsel, proper amendment could not made to the plaint.

23. In any view of the matter, the relief claimed in both the petitions is one of the same except wrong mentioning of registered document number. The certified copy numbers of the documents mentioned in the plaint are corresponding to the registered document numbers. The registered documents cannot be annulled with its certified copy number, but it can be annulled with the original registration number as per the registration. In such circumstances, 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**², 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?

² 2009(8) SCJ 401

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 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."

25. Learned counsel for the petitioners placed reliance on **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

³ 2006 (3) ALT 50 (SC)

amendment are not to be adjudged at the stage of allowing the prayer for amendment."

26. Learned counsel for the petitioners also placed reliance on **Delhi Development Authority v. S.S. Aggarwal and others**⁴ and **Chander Kanta Bansal v. Rajinder Singh Anand**⁵. In both these judgments, the Apex Court, while discussing about applicability of Proviso to Order VI Rule 17 of C.P.C. held that suits filed prior to amendment are not suffice to hold that the proviso introduced by Act 22 of 2002 has no application and it is not a ground to dismiss the amendment application.

27. Learned counsel for the petitioners further placed reliance on the judgment of the Apex Court in **A. Krishna Rao v. A. Narahari Rao and others**⁶, 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."

28. The present suits were filed in the year 1997 that is prior to amendment of CPC by Act 22 of 2002 dated 01.07.2002, the

⁴ 2011 (6) SCJ 496

⁵ 2008 (6) SCJ 440

⁶ 2015 (1) ALT 113

subsequent addition of proviso to Rule 17 of Order VI of CPC will have no application in view of the law declared by the Apex Court in **Delhi Development Authority v. S.S. Aggarwal and others** (4th supra), **Chander Kanta Bansal v. Rajinder Singh Anand** (5th supra) and **A. Krishna Rao v. A. Narahari Rao and others** (6th supra).

29. Therefore, the alleged interdict contained in the Proviso to Rule 17 of Order VI of CPC by Act 22 of 2002 will have no application and the commencement of trial in the suit will not come in the way to exercise discretion in allowing such amendments, which are essential to decide the real controversy between the parties. However, in **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others** (2nd supra) and **Rajesh Kumar Agarwal and others v. K.K. Modi and others** (3rd supra), the Apex Court made it clear that amendment can be allowed on certain terms. In **Rajesh Kumar Agarwal and others v. K.K. Modi and others** (3rd supra), it was specifically held that court always gives leave to amend the pleadings of a party unless it is satisfied that the party applying was acting malafide. 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 not to sub-serve the ends of justice.

30. Therefore, keeping in mind the law declared by this Court and the Apex Court, when the suit was filed prior to amendment of CPC by Act 22 of 2002, the bar contained under Rule 17 of Order VI of CPC cannot be applied and such

amendment can be allowed to sub serve the purpose and decide real controversy between the parties and to shorten the litigation.

In **A. Krishna Rao v. A. Narahari Rao and others** (6th supra) the Apex Court, while dealing with an application under Rule 17 of Order VI of CPC, held that 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.

31. In the present case, on account of mistake committed by the counsel, mentioned certified copy number of the registered document instead of mentioning registered document number. In such case, the court can exercise its discretion in view of the principles laid down by the Apex Court in **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others** (2nd supra), but with costs for the unnecessary delay and inconvenience caused to the respondents compensating the unnecessary delay and inconvenience caused to them. The imposition of costs is an important judicial exercise particularly when the Courts deal with the cases of amendment. Costs cannot and should not be imposed arbitrarily. Even according to the principles laid down in the judgments of the Apex Court referred above, if amendment is

necessary for deciding real controversy, Court may allow such amendment, if the proposed amendment shortens the litigation and avoids multiplicity of proceedings, but on payment of costs.

32. Keeping in view the law declared by the Apex Court and this Court in the judgments referred above, I find that the delay and inconvenience caused to the respondents can be compensated by awarding costs to them, while holding that amended provision of CPC by Act 22 of 2002 will have no application to the present facts of the case.

33. The main reasons for filing civil revision petitions is the proposed amendment would change the nature of the suit and originally the petitioners filed suit for declaration and other reliefs and later filed I.A. No.1400 of 2003 sought for amendment of the plaint that the counsel mentioned the certified copy numbers of the registered documents instead of mentioning Registration numbers of the documents.

34. The proposed amendment would not change the nature of the suit or claim and would not take away the valuable right of the respondents or admission of the petitioners, if any made, except delay.

35. Taking into consideration the peculiar circumstances of the case, more particularly, failure of the counsel, though the petitioners due despite diligence to get the plaint amended at earlier stage by filing I.A. No.1400 of 2003, proposed amendment can be allowed, but on payment of costs on account of delay and inconvenience caused to the respondents.

36. Therefore, I am unable to exercise power under Article 227 of the Constitution of India to interfere with the findings recorded by the trial Court since the trial Court acted within its bounds and passed the order, which is under challenge. Thus, in view of the limited scope of jurisdiction as to exercise powers under Article 227 of the Constitution of India I must examine the order in the guidelines stated above.

37. In the result, these civil revision petitions are dismissed. However, the orders dated 13.08.2010 in I.A. Nos.1856 of 2006 and 3084 of 2007 in O.S. No.306 of 1997 passed by the V Additional Senior Civil Judge (FTC) Ranga Reddy District, are modified that amendment sought for in I.A.Nos.1856 of 2006 and 3084 of 2007 in O.S. No.306 of 1997 is allowed only on payment of costs Rs.2,000/- (Rupees two thousand only) in each petition.

38. Miscellaneous petitions, if any, pending in these civil revision petitions shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:13.06.2017
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