

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2021 of 2017

ORDER:

1) Aggrieved by the order, dated 02.03.2017, passed in I.A.No.625 of 2016 in O.S.No.107 of 2011 on the file of the Senior Civil Judge, Punganur, wherein an application filed under Order VI Rule 17 of C.P.C. seeking permission of the Court to amend the plaint was allowed, the present Civil Revision Petition came to be filed by the defendants under Article 227 of the Constitution of India.

2) The respondent/plaintiff filed the above suit against the petitioners herein and others seeking permanent injunction restraining the petitioners, their men and agents from in any way interfering with her possession and enjoyment over the suit schedule property. When the suit was posted for cross-examination of PW.1, the respondent/plaintiff filed an application seeking amendment of the plaint. The averments in the affidavit filed in support of the said application would show that defendants 7 to 9 filed their written statement stating that they have nothing to do with the suit property and they have not interfered with the possession and enjoyment of the plaintiff at any time. It is stated that about one week prior to filing of the application, when the

plaintiff got measured the land with the assistance of Surveyor, she came to know that the petitioners have occupied a portion of the property. After coming to know about the encroachment and extension of compound wall and construction of tomb, her enquiries revealed that defendants 7 to 9 dumped the excavated mud in between the points ABHI shown in the sketch and constructed tomb about 7 or 8 years back. It is also stated that as per the documents, as the plaint schedule property is not sub-divided, the defendants took advantage of the same and occupied a portion of the schedule property, extended compound wall; dumped the excavated mud and then constructed a tomb over the property. Hence, pleaded the amendment of plaint is necessary. The amendments sought by the plaintiff are for declaration of her title and also for recovery of possession along with mandatory injunction for removal of the compound wall.

3) A counter came to be filed stating that the averments in the affidavit are invented and created for the purpose of filing the petition. It is also stated that the defendants filed their written statement on 05.01.2012 and after a lapse of four years 10 months, when the suit is posted for trial, the plaintiff filed this petition only to fill up her lacunas. It is also stated that the proposed amendment would cause

prejudice to the defendants as it results in introducing new cause of action. It is also stated that the defendants have not encroached on to any extent of land, pertaining to the plaintiff. The plaintiff herself admitted in her cross-examination that she had purchased the land without taking measurements, as such the original extent, on ground had been located by the Commissioner with the help of Deputy Inspector of Survey. She admits that she got measured her land and the same is Ac.0.64 cents. But ignoring the said fact, the plaintiff prepared a rough sketch of her own and filed the present petition.

4) After considering the rival submissions made, the trial Court allowed the petition. Challenging the same, the present Civil Revision Petition is filed by the defendants.

5) Learned counsel for the petitioners would submit that the trial Court allowed the amendment after commencement of trial. He further submits that if the amendment is allowed, the nature of suit itself would be changed. He further submits that the petitioners filed their written statement in the year 2012 itself, but the plaintiff kept quiet for all these years and filed the present application seeking amendment, at a belated stage.

6) Learned counsel for the respondent/plaintiff would submit that no prejudice would be caused to the defendants if the amendment is ordered.

7) 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.”

8) 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. In the instant case the application seeking amendment of the plaint filed at the stage of cross-examination of PW.1.

9) A perusal of the plaint would show that the suit is filed for permanent injunction against the defendants restraining

them, their agents and servants from interfering with the possession and enjoyment of the plaintiff over the plaint schedule property. The amendment sought for is as under:

“a-1) Declare the right and title of the plaintiff in the plaint “B” schedule property and direct the defendants 7 to 9 to deliver possession of the plaint “B” schedule property and if they fail to do so, the same may be done through process of law.

a-2) Grant mandatory injunction for removal of the compound wall at points A and I and tomb constructed in the portion shown as DEFG described in the plaint “B” schedule and shown in the 2nd sketch annexed to the plaint and if the defendants 7 to 9 failed to do so the same may be done through process of law.”

10) 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;

¹ (2009) 10 SCC 84

- 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
- 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.

11) 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 primary 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 has to be allowed. However, proviso appended to Order VI Rule 17 of C.P.C. restricts the power of the Court and puts an embargo on exercise of its jurisdiction. It was held that unless jurisdictional fact, as envisaged therein, are found to be existing, the Court will have no jurisdiction to allow the amendment of the plaint.

12) In the instant case, the claim of the plaintiff is that about one week prior to the filing of the petition, the petitioner got measured the land with the assistance of surveyor in order to lay house sites and form roads, and at that time only, the plaintiff came to know that the

² (2009) 14 SCC 525

respondents raised compound wall and constructed a tomb of the father of the defendants, by occupying the land of the plaintiff. The trial Court held that though new cause of action arose in the suit, the proposed amendment will not change the jurisdiction and will not cause any prejudice to the defendants as the plaintiff is ready to pay the additional court fee towards additional relief claimed by her and due to subsequent events, allowed the petition. Having held that new cause of action arose in the suit, when the trial has commenced, and in view of the law laid down in the judgments referred to above, the trial Court ought not to have allowed the amendment of the plaint.

13) For the aforesaid reasons, I feel that it is a fit case to interfere with the order passed by the trial Court.

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

JUSTICE C. PRAVEEN KUMAR

14.07.2017
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