

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.5033 and 5035 of 2016

COMMON ORDER:

1) C.R.P.No.5033 of 2016 is filed, against the order dated 19.08.2016 passed in I.A.No.296 of 2016 in O.S.No.241 of 2008 on the file of the Principal Junior Civil Judge, Puttur, wherein an application filed under Order VI Rule 17 read with Section 151 of C.P.C. to amend the plaint was dismissed.

2) C.R.P.No.5035 of 2016 is filed, against the order dated 19.08.2016 passed in I.A.No.295 of 2016 in O.S.No.241 of 2008 on the file of the Principal Junior Civil Judge, Puttur, wherein an application filed under Section 151 of C.P.C. for re-opening of the suit was dismissed.

3) Since the issue involved in both the Civil Revision Petitions filed under Article 227 of the Constitution of India are interconnected, they are disposed of by this common order.

4) The facts in issue are as under:

The petitioners herein filed O.S.No.241 of 2008 against the respondents herein seeking permanent injunction restraining the respondents, their men, agents, servants, followers etc., from in any way interfering with their peaceful possession and enjoyment of the plaint "B" schedule property. When the suit is posted for arguments, the petitioners filed petitions to re-open the suit and

also to amend the relief in the suit, for proper adjudication so as to establish their title over the plaint schedule property. It is the case of the petitioners that they filed the above suit for vacant site with sapara and the trial Court directed both the parties to maintain *status quo* till the disposal of the main suit. After passing of the *status quo* order, the respondents are alleged to have high handedly trespassed into the part of the “B” Schedule property on 11.12.2008 and raised some constructions. Then, the petitioners filed I.A.No.1119 of 2008 seeking police protection and for implementation of the interim orders. In the said petition the first respondent appeared before the police, admitted about construction and gave a written undertaking that he will not proceed with further construction. It is further stated in the affidavit that due to lack of awareness about the procedure, the petitioners could not take steps to amend the plaint seeking the relief of declaration and mandatory injunction.

5) First respondent filed counter stating that originally “B” schedule property is a Gutta Poramboke and it belongs to Government. The same was occupied by the first respondent by raising a thatched house and residing with his family since then. Later he applied for grant of patta and after due enquiry the Government granted patta in his favour. Subsequently, Government sanctioned house under Indiramma Scheme. Prior to filing of the suit, the first respondent dug pits and laid foundation and also constructed walls upto slab level, but the petitioners suppressed the real facts and filed the suit with false allegations.

It is said that the petitioners have neither a title nor are in possession of the “B” schedule property and no documents are filed to establish title. It is also his case that after completion of evidence and when the matter is posted for arguments, the present petitions are filed to drag on the proceedings.

6) After considering the rival submissions made, the trial Court dismissed both the petitions. Challenging the same, the present Civil Revision Petitions are filed.

7) Learned counsel for the petitioners would submit that though the Court granted *status quo*, the respondents made constructions in the plaint “B” schedule property and as such, he seeks a declaration of title and mandatory injunction by way of amendment of the plaint. He further submits that in the year 2008 itself the petitioners brought the said fact to the notice of the Court by filing a petition for police protection but due to lack of awareness of procedure, they could not file these petitions. He relied upon the judgment of the Apex Court in *Pankaja and another v. Yellappa (Dead) by L.R.s and others*¹ in support of his plea.

8) 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,

¹ (2004) 6 SCC 415

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.”

9) The judgment relied upon by the learned counsel for the petitioners would not be any help to him. In the said case, the Apex Court held as under:

“The discretion depends on the facts and circumstances of the case. The jurisdiction to allow or not allow an amendment being discretionary, the same will have to be exercised on a judicious evaluation of the facts and circumstances in which the amendment is sought. If the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation the same should be allowed. There can be no straightjacket formula for allowing or disallowing an amendment of pleadings. Each case depends on the factual background of that case.”

10) Subsequently, in *Revajeetu Builders and Developers v. Narayanaswamy and sons and others*² 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 (2009) 10 SCC 84

- 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
 - 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*³, 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 exercise of its jurisdiction. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction at all to allow the amendment of the plaint.
- 12) 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

³ (2009) 14 SCC 525

diligence the party could not have raised the plea before the commencement of trial. In the instant case no explanation is forthcoming as to why the petitioners came to the Court at the belated stage, that too when the suit is posted for arguments, though they came to know about the constructions in the year 2008 itself. Apart from that, originally the suit was filed for permanent injunction and now the amendment is sought for “declaration of right and title of the petitioners over the property and mandatory injunction”, which alters the nature of the suit itself.

13) 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.

14) Accordingly, both the Civil Revision Petitions are dismissed. There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

27.01.2017
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