

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 2484 OF 2015

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed challenging the order dated 30-04-2015 in I.A.No. 399 of 2014 in O.S.No. 34 of 2013 on the file of the learned Judge, Family Court – cum – VII Additional District Judge, Medak at Sangareddy (for short, 'the Court below'), whereby the Court below dismissed the application filed by the petitioners filed under Order VI Rule 17 of the Code of Civil Procedure (for short, 'C.P.C.').

The petitioners are the plaintiffs before the Court below and they filed suit for declaration of their title to the properties described in schedule Nos. 1 and 2 and to direct defendant Nos. 4 to 7 to vacate and deliver vacant possession of the suit schedule property to the plaintiffs and defendant Nos. 1 to 3 or alternatively to pass a preliminary decree declaring that the plaintiffs and defendant Nos. 1 to 3 together have share in the properties described in the schedule *etc.,*. The petitioners filed an application under Order VI Rule 17 of C.P.C. seeking leave of the Court below to amend the plaint which is running into more than four pages alleging that one Yamjala Pedda Yellaiah was the common ancestor of the plaintiffs and defendant Nos. 1 to 3 who own and possessed agricultural land in various survey numbers of an extent of Ac. 32.34 guntas at Patancheru Village, Medak District, which is described in schedule No. 1. The said Yamjala Pedda Yellaiah blessed with one daughter by name Gowramma. The said Gowramma married one Gurujala Muttaiah, S/o Ramulu. Smt. Gurujala Yenamma is none other than the sister of Yamjala Pedda Yellaiah. The natural parents of Muttaiah hailed from Karwan, Langar House, Hyderabad. The said Yamjala Pedda Yellaiah and his wife Yathirajamma were not blessed with any male issues, they took Muttaiah in illatom adoption performing his marriage with

their daughter Gowramma, settled lands described in schedule No. 1 and accordingly the name of Muttaiah was mutated in revenue records for the lands covered by schedule No. 1. After marriage, Muttaiah shifted to Patancheru and since then, Gurujala Muttaiah was known as Yamjala Muttaiah. Muttaiah in course of time purchased agricultural land in various survey numbers of an extent of Ac. 23.02 guntas at Patancheru which is fully described in schedule No. 2 from Rukamma, W/o Anantharam, under registered sale deed bearing document No. 2498 of 1344 fasli dated 12th Mehar 1344 fasli. Thus, the said Muttaiah own and possessed Ac. 55.36 guntas in total.

Muttaiah died in the year 1948 and his wife Gowramma died in 1965 leaving behind them a son by name Narayanaswamy who later died on 15-01-1971 survived by his widow, two sons and one daughter, namely; Rajamma, Narasimha, Sree Ramulu and Lakshmi Narasamma respectively. Rajamma died on 05-07-1997. Consequent upon her death, the plaintiffs and defendant Nos. 1 to 3 belonging to the branch of Narasimha became entitled to claim right and title in the schedule property.

Muttaiah during his lifetime executed Will dated 25-09-1943 (25th Aban 1353 fasli) bequeathing the schedule property in favour of Narasimha, S/o Narayanaswamy. Consequent upon the demise of Muttaiah, Narasimha succeeded the schedule property as a legatee under the Will referred to above and later Narayanaswamy shifted his family to Hyderabad along with Narasimha. However, the properties shown in the schedule continued to remain in possession of Narasimha. Narasimha died on 12-06-1978 and defendant No. 1, being the widow, and the plaintiffs and defendant Nos. 2 and 3, being the children of late Narasimha, succeeded the properties and became lawful owners of the property. Defendant Nos. 4 to 7 have no right or interest whatsoever and they, claiming to be the grandchildren of Sankamma who was the wife of

Muttaiah, forcibly occupied the property during the month of January/February, 2013. The said Sankaramma was not the legally wedded wife of Muttaiah and Gowramma alone was the legally wedded wife of Muttaiah. Therefore, defendant Nos. 4 to 7 have no right or title in the property. Defendant Nos. 4 to 7 filed written statement claiming to be the legal-heirs of deceased Muttaiah and Sankaramma. Therefore, the petitioners sought to clarify certain facts and sought leave of the Court to amend the plaint.

The respondents filed a detailed counter denying material allegations of the affidavit filed along with the petition *inter alia* contending that Will dated 25-09-1943 is forged and it is fabricated. The said Muttaiah never executed any Will bequeathing the property and the said Will is a concoction by the petitioners with the aid of Patwari of the village. The proposed amendment, if allowed, would change the nature of cause of action and take away the valuable right that accrued to the respondents. The allegations made in the proposed amendment are defamatory in nature and late Sankaramma belongs to Munnuru Kapu by caste and not Dommara by caste as mentioned in the proposed amendment. All the allegations as to how she was endeared to Muttaiah and others are false. Yamjala Mallaiah, father of defendant Nos. 4 to 7, and his mother Sankaramma filed declaration before Land Reforms Tribunal which was accepted and binding on defendant Nos. 1 and 2 and the claim of Narasimha was rejected. Thereby, the petitioners are not entitled to seek any property and the proposed amendment cannot be permitted at this stage and prayed for dismissal of the petition.

Upon hearing argument of both counsel, the Court below dismissed the petition on the ground that the allegations made against the grandmother of defendant Nos. 4 to 7 are objectionable insofar as the contesting defendant are concerned and that the proposed amendment though not causes prejudice to the

respondents, the explanation for failure to state those facts in the plaint, which are within the knowledge of the petitioners on the date of filing the suit, is not satisfactory and the petitioners can explain those facts in evidence but not by amendment and negated the relief.

Aggrieved by the order passed by the Court below, the present revision is filed raising several contentions mainly on the ground that the proposed amendment of the plaint is explanatory in nature, providing details of certain facts which were not known earlier to the plaintiffs. The observation of the Court below that the petitioners can adduce evidence is contrary to the settled principle of law that in the absence of any pleading, adducing oral evidence would not arise and the Court below did not consider the necessity of pleadings which are explanatory in nature. The proposed amendment to para No. 11 is only to rectify the typographical mistake and not otherwise and the other amendment is only to explain how Sankaramma had contacts with Muttaiah. Those amendments would not change the nature of the suit and take away any valuable right or withdraw any unequivocal admission and that apart, trial is not yet commenced. Therefore, the order of the Court below is erroneous and prayed to set aside the same allowing this revision.

During hearing, Sri V.Prabrahma Sastry, learned counsel, representing Sri P.Srinivasa Reddy, learned counsel for the petitioners, reiterated the grounds urged in the revision petition and placed reliance on ***Andhra Bank Vs. ABN Amro Bank N. V and others***¹, ***Masireddi Suryanarayana Vs. Akula Anasuyamma***², ***Sajjan Kumar Vs. Ram Kishan***³, ***Surender Kumar Sharma Vs. Makhan Singh***⁴, ***Usha Devi Vs. Rijwan Ahmad***⁵, ***Rajesh Kumar Aggarwal***

¹ AIR 2007 SC 2511

² AIR 1963 AP 298

³ (2005) 13 SCC 89

⁴ AIR 2009 SC (Supp) 2671

and others Vs. K.K.Modi and others⁶, Vidyabai and others Vs. Padmalatha⁷, Mahadeo Maruti Bhanje Vs. Balaji Shivaji Pathade and another⁸ and Chakreshwari Constructions Private Limited Vs. Manohar Lal⁹ in support of his claim and requested this Court to allow the revision petition setting aside the order under challenge since the proposed amendment is explanatory in nature and satisfied the requirements to grant permission to amend the plaint.

Whereas Sri M.Rajamalla Reddy, learned counsel for respondent Nos. 4 to 7, would support the entire order in all respects placing reliance on **Ramoji Rao and another Vs. M.A.E.Kumar Krishna Varma and another¹⁰ and Heeralal Vs. Kalyanmal and others¹¹**. On the strength of the principles laid down in the above judgments, he would contend that the proposed amendment cannot be permitted at this stage since the trial is deemed to have commenced on the date when issues were framed; thereby, negation of relief of amendment under Order VI Rule 17 of C.P.C. cannot be interfered with by this Court while exercising jurisdiction under Article 227 of the Constitution of India which is supervisory in nature and prayed to dismiss the petition confirming the order passed by the Court below.

Considering rival contentions and perusing material available on record, the points that arise for consideration are as follows:

- (1) Whether the proposed amendment would change the nature of the suit or its constitution and would it take away the valuable right, if any, accrued to defendant Nos. 4 to 7-respondent Nos. 4 to 7 or

⁵ AIR 2008 SC 1147

⁶ AIR 2006 SC 1647

⁷ AIR 2009 SC 1433

⁸ 2012 (5) Bom.C.R. 777

⁹ 2017 Law Suit (SC) 123

¹⁰ 2012 (1) ALD 259

¹¹ (1998) 1 SCC 278

withdraws any unequivocal admissions made in the plaint, if so, whether the order passed by the Court below be sustained?

- (2) Whether dismissal of petition for amendment under Order VI Rule 17 of C.P.C. on the ground that the petitioners can adduce evidence explaining the relationship of Sankaramma is in accordance with law?"

In Re. point No. 2:

The petitioners filed suit for declaration of title and other reliefs as stated in the earlier paras while contending that defendant Nos. 4 to 7-respondent Nos. 4 to 7 are in illegal possession and enjoyment of the property whereas respondent Nos. 4 to 7, claiming to be the grandchildren of Sankaramma and Muttaiah, are claiming title over the property. In the proposed amendment, the petitioners intend to explain the relationship of Sankaramma with Muttaiah. Undoubtedly the plaint is running into eight pages including one page of cause-title and one page of genealogy tree but the proposed amendment is running about five pages and the entire allegations in the proposed amendment are only explanatory in nature explaining how Sankaramma endeared with Muttaiah and the relationship between them. When the petitioners wanted to explain the relationship, such amendment would not change the nature of cause of action or the claim in the suit. However, the Court below observed that the petitioners can adduce evidence explaining the relationship but the observation of the Court below is erroneous. Unless there is a pleading, the parties cannot be allowed to adduce any amount of evidence and even if any evidence is adduced, that cannot be looked into for deciding the real controversy between the parties. It is settled principle of law that the Court cannot travel beyond pleadings and record findings. In ***State of Maharashtra Vs. Hindustan Construction Company***

Limited¹² and **Kalyan Singh Chouhan Vs. C.P. Joshi**¹³, the Apex Court consistently ruled as follows:

"Pleadings and particulars are required to enable the Court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the Court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is a settled legal proposition that "as a rule, relief not founded on the pleadings should not be granted". Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ."

In **Union of India Vs. Ibrahim Uddin and another**¹⁴, the Apex Court held that

"Relief not founded in pleading cannot be granted. A decision of a case cannot be based on ground outside the pleadings of the parties. No evidence is permissible to be taken on record in absence of pleadings in that respect. No party can be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by the parties in support of the case set up by it."

It was further held as follows:

"Where evidence was not in lines of pleadings, the said evidence cannot be looked into or relied upon."

In view of the law declared by the Apex Court in the judgments referred above, the parties cannot be permitted to let in evidence either oral or documentary in the absence of any specific pleading. In the present facts of the case, the relationship between Sankaramma and Muttaiah is in dispute and such dispute has to be explained in pleadings and by adducing evidence in support of such plea, otherwise the evidence whatever adduced explaining the relationship between Sankaramma and Muttaiah cannot be looked into. Therefore, the

¹² 2010 (4) SCC 528

¹³ AIR 2011 SC 1127

¹⁴ 2012 (8) SCC 148

observation of the Court below in dismissing the petition on the ground that the petitioners can adduce evidence is contrary to the law laid down by the Apex Court. Hence, the reason recorded by the Court below for negating the relief under Order VI Rule 17 of C.P.C. is hereby set aside. Accordingly, the point is answered in favour of the petitioners and against the respondents.

In Re. point No. 1:

Normally when petitions under Order VI Rule 17 of C.P.C. are filed at pre-trial stage, Court would order such applications granting leave to parties to amend their pleadings and if it is post-trial amendment, then Court may put on guard in allowing such applications since it would cause prejudice to the other parties to the suit or proceedings. In the present case on hand, the suit was filed for the reliefs stated above and the present facts by way of amendment proposed to be brought on record are only explanatory in nature and they would not change the cause of action or the relief claimed in the plaint and they would not withdraw the admissions if any made. Therefore, such amendment would not cause any prejudice since the trial is not yet commenced except framing issues. However, there is still some conflict with regard to commencement of trial. According to Order VI Rule 17 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 purpose of determining the real questions in controversy between the parties. The principles to allow petitions under Order VI Rule 17 of C.P.C. are well settled, namely; 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 respondents or such amendment would not amount to withdraw unequivocal admissions made in the pleadings as held by the Apex Court in ***Rajkumar Guruwara (dead) through LRs Vs. S.K.***

Sarwagi and Company Private Limited and another¹⁵. In view of the law declared by the Apex Court in the above judgment, the Court has to find out whether the proposed amendment would fall within the parameters laid down by the Apex Court and if it would fall within the ambit of the guidelines, Courts can allow such amendments, otherwise reject the same.

A proviso to Order VI Rule 17 of C.P.C. is introduced by Act 22 of 2002 creating an interdict on the powers of the Court to exercise discretion in routine manner for amendment of pleadings of either party. In view of the interdict, unless the Court comes to the conclusion that, in spite of due diligence, the party could not have raised the matter before commencement of trial, the Court shall not allow such an amendment. The intention of the legislature in incorporating Order VI Rule 17 of C.P.C. is to avoid multiplicity of litigation permitting the petitioners to amend their pleadings appropriately. In ***A.Krishna Rao Vs. A.Narahari Rao and others***¹⁶, while dealing with an application under Order VI Rule 17 of C.P.C., the Apex Court 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."

Thus, in view of the law declared by the Apex Court, Courts can permit amendments to avoid multiplicity of proceedings. In ***Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and others***¹⁷, the Apex Court laid

¹⁵ (2008) 14 SCC 364

¹⁶ 2015 (1) ALT 113

¹⁷ 2009(8) SCJ 401

down certain guidelines for granting or denying relief under Order VI Rule 17 of C.P.C., 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;*
- 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. 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 the present facts of the case, no fresh claim is made, the proposed amendment would not change the nature and character of the suit constitutionally or fundamentally and question of prejudice does not arise at this stage as the trial is not yet commenced and it is only explanatory in nature for deciding the real controversy between the parties. If the proposed amendment is tested with reference to the principles laid down in the above judgment, the amendment which is explanatory in nature can be permitted.

Learned counsel for the petitioners, in support of his contention that amendment can be allowed at any stage, has drawn the attention of this Court to **Sajjan Kumar** (3rd *supra*), wherein the Apex Court held that

"If the proposed amendment is necessary for the purpose of bringing to the fore the real question in controversy between the parties, refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff succeeding in the suit. Though the plaintiff ought to have been diligent in promptly seeking amendment in plaint at an early stage of suit, more so when error in question had been pointed out in written statement, amendment should have been allowed with imposition of costs."

If the principle laid down in the above judgment is applied, leave cannot be declined at the pre-trial state or before adducing evidence by the plaintiff in the said suit. In **Rajesh Kumar Aggarwal** (6th *supra*), the Apex Court made it clear that merits of the proposed amendment cannot be gone into at the stage of allowing amendment and the object of the rule is that the Court should try merits

of case before it 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 other side.

Order VI Rule 17 of C.P.C. consists of two parts, namely; first part is discretionary and leaves it to the Court to order amend pleadings and second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of deciding real controversy between the parties. The real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such amendment is necessary to decide the real dispute between the parties. If it is, amendment will be allowed and if it is not, amendment shall be refused. Even if the principle laid down in the above judgment is applied to the present facts of the case, the Court cannot negate the relief of amendment. In **Surender Kumar Sharma** (4th *supra*), a Full Bench of the Apex Court while deciding a similar issue held that delay by itself is not sufficient ground to reject the amendment and the duty of the Court is to see whether, by allowing belated amendment, the real controversy between the parties may be resolved and whether opposite party can be compensated by costs or otherwise. Similarly in **Usha Devi** (5th *supra*), the Apex Court had an occasion to deal with amendment of schedule at the earliest stage and the proposed amendment is only to correct the description of the suit property but the plaintiff was not diligent. Even then, the Apex Court held that the proposed amendment is necessary for bringing the fore the real controversy between the parties following the judgment in **Sajjan Kumar** (3rd *supra*) and imposed costs of Rs.10,000/-. Thus, it is the duty of the Court to test the proposed amendment in view of the law declared by the Apex Court in **Revajeetu Builders and Developers** (17th *supra*) and if the Court finds that the proposed amendment is necessary before commencement of trial, the Court can exercise its discretion

and permit the parties to amend pleadings appropriately. If trial is commenced, it is for the petitioner to establish that despite due diligence, he could not bring those facts to the notice of the Court by amending the plaint appropriately. In the present case, the amendment application was filed even before examining the plaintiff as witness before the Court but issues were framed. In such case, it is difficult for me to conclude that the proposed amendment is a post or pre trial amendment since the trial has not been commenced. In **Andhra Bank** (1st *supra*), the Apex Court considered the scope of Order VI Rule 17 of C.P.C. and concluded that delay in seeking amendment is no ground to refuse amendment and the plea that the amendment was sought to stall hearing of the suit on the date fixed and rejecting the application for amendment is an illegality. Therefore, at any stage, amendment can be allowed subject to satisfy that it is necessary for the purpose of deciding the real controversy.

In **Vidyabai** (7th *supra*), the Apex Court had an occasion to deal with a situation whether or not amendment can be allowed after commencement of trial and held that trial commences on the day when issues are framed. In the above judgment, the High Court granted leave to amend written statement after the plaintiff filed affidavit in lieu of examination in chief under Order 18 Rule 4 of C.P.C. and the same was set aside by the Apex Court. In para Nos. 42 and 43, the Apex Court discussed about the stage of commencement of trial based on Full Bench judgment in **Kailash Vs. Nanhku**¹⁸. As per proviso to Order VI Rule 17 of C.P.C., no application for amendment shall be allowed after trial has been commenced unless the matter could not be raised before commencement of trial in spite of due diligence. In **Salem Advocate Bar Association Vs. Union of India**¹⁹, the Apex Court is of the view that leave cannot be granted to amend pleadings when the matter was adjourned on various dates of hearing. The

¹⁸ (2005) 4 SCC 480

¹⁹ (2005) 6 SCC 344

amended proviso, in view of the recommendations of Law Commission, is to shorten the litigation and speed up disposal of the suits and curtail the power of the Court to exercise unfettered discretion in ordering such petitions. What is commencement of trial was discussed in **Kailash** (18th *supra*), wherein it was held as follows:

"At this point, the question arises: when does the trial of an election petition commence or what is the meaning to be assigned to the word "trial" in the context of an election petition? In a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence. All the proceedings before that stage are treated as proceedings preliminary to trial or for making the case ready for trial. As held by this Court in several decided cases, this general rule is not applicable to the trial of election petitions as in the case of election petitions, all the proceedings commencing with the presentation of the election petition and up to the date of decision therein are included within the meaning of the word trial."

In **Ajendraprasadji N. Pandey and another Vs. Swami Keshavprakeshdasji N. and others**²⁰, the Apex Court relied on **Kailash** (19th *supra*) to hold that

"By Act 46 of 1999, there was a sweeping amendment by which Rules 17 and 18 were wholly omitted so that an amendment itself was not permissible, although sometimes effort was made to rely on Section 148 for extension of time for any purpose. Ultimately, to strike a balance, the legislature applied its mind and reintroduced Rule 17 by Act 22 of 2002 with effect from 01-07-2002. It had a provision permitting amendment in the first part which said that the Court may at any stage permit amendment as described therein. But it also had a total bar introduced by a proviso which prevented any application for amendment to be allowed after the trial had commenced unless the Court came to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. It is this proviso which falls for consideration."

In **Baldev Singh and others Vs. Manohar Singh and another**²¹, the Apex Court opined as follows:

²⁰ (2006) 12 SCC 1

²¹ (2006) 6 SCC 498

"Before we part with this order, we may also notice that proviso to Order 6 Rule 17 C.P.C. 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 hereinbefore, 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 VI Rule 17 C.P.C. which confers wide power and unfettered discretion to the Court to allow an amendment of the written statement at any stage of the proceedings."

But the Apex Court in **Vidyabai** (7th *supra*) is of the opinion that the proposition that trial would not be deemed to have commenced on the date of first hearing as held in **Baldev Singh** (21st *supra*) is not authoritative and ultimately concluded that if the Court concludes that the proposed amendment is necessary to decide the real controversy, the Court may allow such amendment. In the present facts of the case, the proposed amendment is explanatory in nature as respondent Nos. 4 to 7 are claiming to be the grandchildren of Muttaiah and Sankaramma whereas the petitioners are claiming to be the great-grandchildren of Muttaiah and Sankaramma. The relationship between the parties assumes much importance to decide the real controversy between the parties. In the absence of any pleading regarding relationship between the parties, it is difficult to decide the real controversy. Therefore, the proposed amendment is necessary for deciding the real controversy.

Learned counsel for respondent Nos. 4 to 7, while contending that in view of proviso to Order VI Rule 17 of C.P.C., after commencement of trial, amendment cannot be allowed, drawn the attention of this Court to **Ramoji Rao** (10th *supra*), wherein this Court, after elaborate consideration of the law declared

by various Courts with reference to the provisions, held that after commencement of trial, leave cannot be granted to amend pleadings except where the parties are able to establish that despite exercise of due diligence, they could not bring to the notice of the Court of certain facts by amending the pleadings. This Court considered various judgments of the Apex Court prior to and after amendment of C.P.C. by Act 22 of 2002. Here the plaintiffs filed petition under Order VI Rule 17 of C.P.C. immediately after filing written statement and issues are framed. Therefore, the question of exercising due diligence would not arise since the plaintiffs came to know the plea only on filing written statement. The plaintiffs, instead of filing subsequent pleadings under Order VIII Rule 9 of C.P.C., filed the present petition under Order VI Rule 17 of C.P.C. Therefore, the question whether or not the plaintiffs are entitled to seek leave to amend or file subsequent pleadings need not be examined. Similarly in **Heeralal** (11th *supra*), the Supreme Court held that by way of amendment of pleadings, withdrawal of admissions made in the written statement by the defendant would displace the case and cause him irretrievable prejudice and such amendment is not permissible but this judgment is of no assistance to the respondents since the present amendment would not introduce any new fact. In any view of the matter, as per the judgment in **Revajeetu Builders and Developers** (17th *supra*), the Court has to consider whether the proposed amendment would fall within the parameters or not and by analyzing the material on record and by testing the proposed amendment with reference to the guidelines issued by the Apex Court, I find that the proposed amendment is necessary for deciding the real controversy and the delay can be compensated by awarding costs. The Court below without considering the nature of amendment dismissed the application on the simple ground that the petitioners can adduce evidence without amendment of pleadings. In view of the law

declared in the judgments referred in point No. 2, such conclusion is *ex facie* erroneous. Similarly, the evidence of parties is not yet commenced and in such case, no prejudice would be caused to the respondents if amendment is allowed as they are having the opportunity of filing additional written statement and contest the matter on merits.

In view of my foregoing discussion, I find that the order of the Court below is erroneous since it fails to exercise discretion properly and such finding can be set aside by exercising power under Article 227 of the Constitution of India.

The civil revision petition is accordingly allowed setting aside the order dated 30-04-2015 in I.A.No. 399 of 2014 in O.S.No. 34 of 2013 on the file of the Court of learned Judge, Family Court – cum – VII Additional District Judge, Medak at Sangareddy, granting leave to the petitioners to amend their pleadings as prayed for. Pending miscellaneous petitions, if any, shall stand closed in consequence. No costs.

M.SATYANARAYANA MURTHY, J.

Date: 12-07-2017.

JSK