

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.433 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the unsuccessful respondent/ 2nd defendant assailing the order, dated 04.01.2016, of the learned Principal Junior Civil Judge, Chirala, passed in IA.no.1264 of 2015 in OS.no.55 of 2010 filed by the petitioner-plaintiff under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, ['the Code', for brevity] requesting to permit the plaintiff to amend the plaint as stated in the petition list.

2. I have heard the submissions of *Sri K.Subba Rao*, learned counsel appearing for the revision petitioner-2nd defendant, and of *Sri Y.Narapa Reddy*, learned counsel appearing for the 1st respondent-plaintiff. I have perused the material record.

2.1 The parties shall hereinafter be referred to as the plaintiff and the defendants for convenience and clarity.

3. The facts, which are required to be stated as a preface to this order, in brief, are as follows:

The plaintiff brought the suit against the defendants including the revision petitioner/ 2nd defendant for cancellation of a sale deed, dated 26.02.2008, executed by the 1st defendant in favour of the 2nd defendant and for costs pleading *inter alia* that the transaction under the sale deed is null and void. The 2nd defendant filed a written statement resisting the suit. During the pendency of the suit, the plaintiff filed aforesaid interlocutory application to permit the plaintiff to amend the plaint and carry out consequential amendments to enable the plaintiff to seek the reliefs of declaration of ownership of the plaintiff over the plaint

schedule property and recovery of vacant possession of the said property, viz., Ac.00.06 cents (=0.024 hectares = 291 square yards) situated at Epurupalem village, Vadarevu Panchayat, Chirala Mandal, more fully described in the schedule annexed to the plaint. The 2nd defendant filed a counter resisting the said application. On merits and by the orders impugned in this revision, the trial Court allowed the petition of the plaintiff. Hence, the unsuccessful 2nd defendant is before this Court.

4. Before proceeding further, it is necessary to refer to the pleadings of the parties.

4.1 The case of the plaintiff and the submissions made on his behalf, in brief, are as follows: 'The plaintiff filed the suit for cancelation of registered sale deed, dated 26.02.2008, executed by the 1st defendant in favour of the 2nd defendant. The 1st defendant sold the plaint schedule property of an extent of Ac.00.06 cents to the plaintiff for a valuable consideration of Rs.4,365/- under registered sale deed, dated 21.05.1988, duly registered in the Sub Registrar's office, Chirala, vide Document bearing no.1413/1988, by clearly mentioning the measurements as well as extent. Suppressing the said fact, the defendants in collusion with each other created another sale deed in respect of the plaint schedule property in favour of 2nd defendant on 26.02.2008, and got the same registered in the office of the Sub Registrar, Chirala. The said sale deed was brought into existence with a view to defeat the valuable rights of the plaintiff over the plaint schedule property. Recently, the plaintiff came to know that the 2nd defendant ploughed the plaint schedule property. Thus, the plaintiff lost possession over the plaint schedule property. Hence, the learned counsel for the plaintiff advised the plaintiff to seek amendment of the

plaint. Hence, the present petition is filed to permit the plaintiff to seek amendment and consequential amendments of the plaint.'

4.2 Per contra, the case of the 2nd defendant and the submissions made on his behalf, in brief, are as follows: 'The material allegations in the plaint as well as in the affidavit filed in support of the petition are false. The same are specifically denied. The plaintiff recently came to know that this defendant ploughed the plaint schedule land and that the plaintiff thus lost possession and that therefore, he was advised to seek amendment of the plaint are false and invented allegations. This defendant has been in possession and enjoyment of Ac.2.50 cents in Epurupalem village, Chirala Mandal, from the date of purchase under the agreement of sale, dated 26.09.1992. Later, a registered sale deed was executed in favour of this defendant. There is no cause of action clearly mentioned in the proposed amendment. As the plaintiff is aware that he will not succeed in the suit, the present amendment petition is intentionally filed belatedly though the written statement of this defendant was filed about four years back. The proposed amendment, if allowed, changes the cause of action. The limitation to seek the relief of declaration of title is three years. The suit is filed in the year 2010. The relief of declaration of ownership is barred by law of limitation. Hence, the amendment petition cannot be allowed.

5. At the hearing, learned counsel for both the sides made submissions in line with the respective pleaded cases of the parties.

5.1 Learned counsel for the 2nd defendant contended as follows: 'The 2nd defendant is in possession and enjoyment of the subject property since 26.09.1992 and hence, the relief of declaration of ownership, which the plaintiff wants to seek by way of proposed amendment, is

barred by limitation. Hence, the application seeking amendment of the plaint is untenable and not maintainable. The Court below having noted the delay in filing the application for amendment and laches on the part of the plaintiff in seeking the amendment ought not to have allowed the application of the plaintiff. The Court below failed to note that the proposed amendment, if permitted, changes the nature of the suit. Hence, the revision may be allowed by setting aside the order impugned in this revision.

5.2 The learned counsel for the plaintiff supported the orders of the Court below *inter alia* stating that the order impugned is justified under facts and in law.

6. I have given earnest consideration to the facts and submissions.

7. At the outset, it is necessary to refer to the proposed amendments being sought for by the plaintiff. They read as under:

“1) Add in para-C of the plaint: “The plaintiff recently came to know that the 2nd defendant ploughed the plaint schedule property and the plaintiff lost possession over the same.

2) add in the 5th line of last para of the particulars of the plaint “and to declare that the plaintiff is the owner of the plaint schedule property.”

3) add in the 6th line of the Cause of Action para “and when the 2nd defendant plough the plaint schedule property,

4) add after 4th para as 5th para in the Valuation portion: “The plaintiff values the relief of declaration pertaining to the Plaint Schedule Property the value of the same is Rs.1,74,300/- - 3/4th of the same is valued at Rs.1,30,950/- over which a court fee of Rs.3,826/- is paid under Section 24(b) of A.P.S.V & C.F. Act.”

In lieu of the court fee stamps the plaintiff deposited the amount of Rs.3,826/- in the Andhra Bank, Gavinvaripalem Branch, Chirala S.B.A/c No.18813 and the counterfoil is herewith filed.”

5) add in the fifth line of para-a of the Relief portion as
 “and to declare the plaintiff is the owner of the plaint schedule
 property and consequential vacant possession of the said land
 from the defendants directing them to handover possession of
 the land to the plaintiff within stipulated time, failing which the
 same may be done through process of law, by fixing the
 boundaries with the help of qualified surveyor.”

[Reproduced verbatim]

8. Since by way of the proposed amendment, the plaintiff intends to claim the relief of declaration of ownership/ title in addition to the relief of cancellation of a registered sale deed, the first aspect to be dealt with is as to ‘whether such an amendment of plaint as sought for can be permitted?’. In *Pankaja v. Yellappa*¹, the Supreme Court while holding that though the plaint is initially filed for permanent injunction there is no bar for permitting the amendment of the plaint to seek the relief of declaration of title in respect of plaint schedule property, had set aside the order of the trial Court rejecting the application seeking amendment as confirmed by the High Court and had permitted the amendment, holding *inter alia* that the question – ‘whether or not the suit seeking the relief of declaration is barred by limitation’ can be gone into in the main suit. Following the same analogy it can safely be held that the plaintiff’s request for the amendment of the plaint can be granted.

9. The next aspect to be dealt with is as to ‘whether such an amendment of plaint as sought for cannot be permitted on the ground of delay?’. Dealing with the aspect of delay in seeking the amendment, it is to be noted that in *Sampath Kumar v. Ayyakannu*², the facts disclose that the trial Court had rejected the application for amendment of pleadings on the ground of delay and the Madras High Court while

¹ 2004 (6) SCC 415

² (2002) 7 SCC 559

dismissing the revision had confirmed the said order of the trial Court; However, the Supreme Court while setting aside the orders of the said two courts and permitting the amendment of the plaint, which was sought for about 11 years from the date of institution of the suit, had held as follows:

In the present case, the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits, it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment.

Therefore, on the ground of mere delay, however long it may be, an application for amendment cannot be rejected provided the facts of the case warrant allowing of the amendment.

10. Dealing next with the aspect that the relief of declaration of title now being sought to be introduced by way of the proposed amendment is barred by law of limitation and the submission of the learned counsel for the 2nd defendant that the period of limitation for seeking declaration of title is 3 years as per the provision of the Article 58 of the Indian Limitation Act, what is to be noted is that issue of limitation is blend of fact and law and is not a pure question of law. This question need not detain this Court for long as in *Pankaja v. Yellappa* (1 supra), the Supreme Court while holding that though the plaint is initially filed for permanent injunction there is no bar for permitting the amendment

of the plaint to seek the relief of declaration of title in respect of plaint schedule property, had set aside the order of the trial Court rejecting the application seeking for amendment as confirmed by the High Court and had permitted the amendment holding *inter alia* that the question – ‘whether or not the suit seeking the relief of declaration is barred by limitation’ can be gone into in the main suit. Further, in the decision in *M.Chokka Rao v. Sattu Sattamma*³, this Court having exhaustively dealt with provisions of law under the Indian Limitation Act and the relevant precedents had laid down that when the suit is not for a simple declaration but is for a declaration coupled with further relief, the limitation is 12 years but not 3 years and that Article 58 is not applicable to such suits. While the learned counsel for the 2nd defendant pleaded that under Entry 58 of the Schedule to the Limitation Act, the declaration sought for by the 1st respondent/plaintiff in this case ought to have been done within 3 years when the right to sue first accrued, the plaintiff contends that the same does not fall under the said Entry but falls under Entry 64 or 65 of the said Schedule of the Limitation Act, which provides for a limitation of 12 years. Therefore, according to the plaintiff the prayer for declaration of title is not barred by limitation. Be that as it may, as already noted, the issue of limitation will have to be gone into by the trial Court at an appropriate stage in the main suit, it being a mixed question of fact and law. As a result, in the well considered opinion of this Court, on the ground of limitation, the application seeking amendment of the plaint is not liable for rejection as in the case on hand, the trial Court has to consider at an appropriate later stage the aspect whether suit for declaration seeking further relief is governed by Article 58 or Articles 64 and 65 of the Indian Limitation Act.

³ 2006(1) ALD 16

11. Before proceeding further, it is necessary to note the proviso to Order VI Rule 17 of the Code, which reads as under:

“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.”

In the case on hand, issues were framed way back, on 17.08.2012, and the suit is coming up for adduction of evidence. In *Usha Devi v. Rijwan Ahamd*⁴, a contention was advanced that the trial of the suit would commence with the settlement of the issues; and, in support of the said contention that the framing of issues marked the commencement of the trial of the suit, reliance was placed on the decision in *Ajendraprasadji N.Pandey v. Swami Keshavprakeshdasji* [(2006) 12 SCC1]. However, while meeting the said contention, the attention of the Supreme Court was invited to the decision of the Supreme Court in *Baldev Singh v. Manohar Singh* [(2006) 6 SCC 498] wherein it was held as follows:

“Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC 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 VI 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 CPC which confers wide power and unfettered discretion on the

⁴ (2008) 3 Supreme Court Cases 717

Court to allow an amendment of the written statement at any stage of the proceedings.

Further, the Supreme Court having referred to a three-judge Bench decision in *Sajjan Kumar v. Ram Kishan*⁵, had held as follows:

“Having heard the learned Counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial Court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial Court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the Plaintiff-Appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit.”

Thus in *Usha Devi's* case (*Supra*), the Supreme Court, keeping in view of the decision in *Sajjan Kumar* (*supra*), held as follows:

“We may clarify here that in this order we do not venture to make any pronouncement on the larger issue as to the stage that would mark the commencement of trial of a suit but we simply find that the appeal in hand is closer on facts to the decision in *Sajjan Kumar* and following that decision the prayer for amendment in the present appeal should also be allowed.”

In the case on hand also, the trial has not yet commenced and the suit is coming for adduction of evidence. Therefore, in the well considered view of this Court, the facts of the present case are akin to the facts of

⁵ (2005) 13 SCC 89

the cases in the decisions in Usha Devi, Baldev Singh and Sajjan Kumar (supra). Therefore, the contention that the application seeking amendment of the plaint is barred under the proviso to Order VI Rule 17 of the Code is devoid of merit and needs no countenance.

12. In REVAJEETU BUILDERS V/s NARAYANA SWAMY⁶, on an analysis of English and Indian case law, the Supreme Court carved out the following principles which should weigh with the Court while dealing with an 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 bonafide or malafide;
- (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.

The Supreme Court, however, clarified that the above principles were illustrative and not exhaustive. Further, in the decision in Abdul Rehman and Another v. Mohd. Ruldu and Others⁷, the Supreme Court, having taken note of the above provision of law had laid down that it is clear that the parties to the suit are permitted to bring forward amendment of the pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them and that the Courts have to be liberal in accepting the same, if such

⁶ (2009) 10 SCC 84

⁷ 2013(1) ALD 1(SC)

application for amendment is made prior to the commencement of the trial and that if such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that, inspite of due diligence, the party could not have raised the matter before the commencement of the trial. In the above decision the Supreme Court reiterated the following proposition:

“All amendments which are necessary for the purpose of determining real questions of controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.”

In the above decision the Supreme Court further referred to the ratio in the decision in Pankaja and another v. Yellapa (1 supra), which runs as follows:

“If the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed.”

13. One of the contentions of the plaintiff is that recently he came to know that the 2nd defendant ploughed the plaint schedule property and thus, he lost possession over the same and that his counsel advised him to seek amendment of the plaint and hence, seeking of the amendment of the plaint was necessitated. Even as per the guidance in the decision of the Supreme Court an amendment can be permitted if it is intended to determine the real question in controversy and that all amendments, which are necessary for the purpose of determining real questions of controversy between the parties, shall be allowed if such amendments sought for do not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the

nature of the suit. The power of amendment should be exercised in the larger interests of doing full and complete justice between the parties and that all amendments, which are necessary for the purpose of determining the real question in controversy, should be allowed. Further, if the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed. The Court has also to consider whether the proposed amendment is intended to determine the real dispute between the parties. The law is well settled that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Further, as the refusal of the request seeking amendment does not preclude the plaintiff from instituting a fresh suit, the refusal of the request leads to multiplicity of the litigation. In the well-considered view of this Court, if the amendment is permitted, though sought belatedly also helps in avoiding the multiplicity of the proceedings and in setting at rest the dispute between the parties. Be it noted that the law is well settled that the merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. Therefore, for all the aforesaid reasons, granting of amendment of the plaint really sub-serves the ultimate cause of justice and avoids further litigation and therefore, the amendment sought for by the plaintiffs deserves to be allowed.

14. Viewed thus, this Court finds that the order of the trial Court is sustainable both under facts and in law. On a careful consideration of the facts, submissions and the legal position obtaining, this Court is satisfied that the Trial Court is justified in allowing the amendment of

the plaint and that therefore, the impugned order brooks no interference.

15. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, in this revision shall stand closed.

M. SEETHARAMA MURTI, J

20.12.2017

Note:- LR copy to be marked
(B/o)
RAR

