

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P. Nos. 3498 and 3536 of 2017 & Nos.5687_2016

COMMON ORDER:

CRP NO.3498 of 2017

This Civil Revision Petition under Article 227 of the Constitution of India is filed by the petitioners/plaintiffs challenging the Order dt.24.08.2016 in I.A.No.75 of 2016 in O.S.No.17 of 2009 passed by the Junior Civil Judge at Rayadurg, Anantapur District.

The petitioners are the plaintiffs in the O.S.No.17 of 2009 and they filed the suit for the relief of declaration and for delivery of possession of the suit schedule property and alternatively for cancellation of the tampered entries in the names of the defendants in Adangals in respect of the suit schedule property and for permanent injunction restraining all the defendants, their men, heirs, executors, henchmen, assignees, supporters, followers, agents, relatives, servants, political leaders, kith and kin claiming as owners of the schedule property having purchased the same under registered sale deed.

After completion of trial before the Court, the petitioners filed the present petition under Order 6 Rule 17 CPC along with two others applications filed under Order 1 Rule 10(2) and Section 151 CPC to implead the Tahsildar, Gummagatta, the District Collector, Anantapuram District and to reopen the evidence in the suit, to adduce further evidence respectively.

It is alleged in the petition and affidavit that the petitioners claimed various reliefs, but failed to seek the relief of declaration of title to the schedule property along with other reliefs and due to

mistake, oversight, illiteracy and ignorance, the petitioners could not seek such relief of declaration of title to the schedule property and sought leave to amend the plaint to add additional relief of declaration of title to the schedule property.

Respondent No.22 alone filed Counter, and the same was adopted by Defendant No.23, contending that the petition is not maintainable either in law or on facts and the present suit for various reliefs was filed long ago and the allegation against this respondent that he has tampered the revenue record is not true and correct and that he has never tampered revenue record at any point of time and that there are no grounds to grant leave to the petitioners to amend the plaint incorporating the relief of declaration of title to the schedule property.

After hearing both the counsel, the trial Court dismissed the petition assigning its own reasons.

Aggrieved by the Order dt.24.08.2016 passed by the trial Court, the present revision is filed assailing the Order under challenge on various grounds.

During hearing, the learned counsel for the petitioners/plaintiffs reiterated the grounds urged in the petition, more particularly, the reason assigned for failure to seek the relief i.e., by mistake, oversight, illiteracy and ignorance, and thereby failed to seek such relief.

The counsel for the respondents herein supported the Order dt.24.08.2016 in all respects.

After considering the material available on record, the point that arise for consideration is:

“ Whether leave under Order 6 Rule 17 CPC be accorded to these petitioners/plaintiff to amend the plaint so as to claim relief of declaration of title over the schedule property at this stage?

Admittedly, the suit was filed for various reliefs as stated above and the evidence of the plaintiffs was closed and at this stage, a petition under Order 6 Rule 17 CPC along with other petitions i.e., to reopen the evidence and to implead the Tahsildar and the Collector of Ananthapuram were filed.

The only ground urged in the affidavit is that due to mistake, oversight, illiteracy and ignorance, they could not claim the relief of declaration of title to the schedule property and even for the bar contained in the proviso to Order 6 Rule 17 CPC, the reason assigned by them is the same.

According to Order 6 Rule 17 CPC, the Court may at any stage of the proceedings allow either party to alter or amend his/her 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.

Here in this case, the trial was almost completed and a petition was already filed to reopen the evidence of the petitioners and therefore, it is the duty of the petitioners to prove that despite exercising due diligence, they could not raise the matter before the commencement of trial.

What is due diligence is again a question to be decided by the Court.

The Apex Court in *Chandrakanta Bansal v. Rajinder Singh Anand*¹ while deciding the matter pertaining to under Order 6 Rule 17 CPC discussed about the meaning of the word 'due diligence' in para No.16 and held that the word 'due diligence' has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word 'diligence' means careful and persistent application or effort. 'Diligent' means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eight Edition), 'Diligence' means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. 'Due diligence' means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edition 13A) 'due diligence', in law, means doing everything reasonable, not everything possible. 'Due diligence' means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs.

The Apex Court in *Bharat Petroleum Corporation Limited v Precious Finance Investment Private Limited*², defined the word 'due diligence' almost in the same lines, which is as follows:

"The Dictionary meaning of the expression "due diligence" as given in the Blacks Law Dictionary, Sixth Edition, 1990 means "Such a measure of prudence, activity or assiduity, as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent man under the particular circumstances; not measured by any absolute standard, but depending on the relative facts of the special case." Similarly the Law Lexicon by P. Ramanatha Aiyer, Second Edition (Reprint) 2001 explains "due diligence" to mean such watchful caution and foresight as the circumstances of the particular case demands. While examining the explanation offered or cause shown as to why in spite of due diligence a party could not have raised the matter before commencement of trial, the Court may

¹ (2008) 5 SCC 117

² 2006 (6) BOM CR 510

have to see the circumstances in which the party is seeking amendment. In short the explanation as to "due diligence" depends upon the particular circumstances and the relative facts of each case to reach a conclusion one way or the other."

In view of the definition given to the Word 'due negligence', it is for the petitioners that they, as prudent men had exercised diligence or effort in conduct of their own affairs. But, here in this case, the Written Statement was filed as early as in the month of June, 2009 and completed entire trial of the case i.e., recording of evidence, except advancing arguments. Instead of explaining the reason as to exercise of 'due diligence' and failed to take steps to amend the plaint suitably after filing Written Statement, he invented a ground of 'mistake, oversight, illiteracy and ignorance'. But, those are not the grounds to hold that the petitioners have exercised due diligence and despite exercise of due diligence, the petitioners could not raise those contentions by amending the plaint as per the proviso of Order 6 Rule 17 CPC.

The suit was filed for recovery of possession and other consequential reliefs. But, now the petitioners wanted to convert the suit into a suit for declaration of title and other reliefs. The defendants filed Written Statement in the month of June, 2009, denying the title of the plaintiffs and created a cloud on the title, thereby the limitation starts from the date when the defendants filed Written Statement i.e., in the month of June, 2009 and the limitation for declaration is only three years from the date of such cloud created on the title to the knowledge of the petitioners, but filed petition in the year 2016 i.e., after lapse of seven years, as such the relief of declaration of title *prima facie* barred by limitation and such time barred amendments cannot be allowed.

In *Rameshkumar Aggarwal v Rajmala Exports Private Limited*³, the Apex Court while relying on *Revajeetu Builders and Developers v Narayanaswamy and sons and others*⁴, to decide the scope of proviso to Order 6 Rule 17 CPC laid down certain guidelines for granting or denying relief under Order 6 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?
- 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."

³ AIR 2012 SC 1887

⁴ 2009(8) SCJ 401

Even according to guideline No.6, it is made clear that 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.

In the present case, a fresh suit for declaration of title as on the date of filing the petition is hopelessly barred by limitation and in such case, the amendment can be declined.

In view of my foregoing discussion, the petitioners miserably failed to establish that despite exercising due diligence, they failed to raise such contention by amending the plaint to seek the relief of declaration of title and that the relief of declaration by way of amendment is hopelessly barred by limitation on the face of record as the respondents filed Written Statement in the month of June, 2009 before the trial Court i.e., almost 7 years prior to filing the present petition. In such a case, by applying the principles laid down in *Ramesh Kumar Agarwal* (3 supra) *Revajeetu's* case (4 supra), the amendment cannot be allowed. The trial Court rightly declined the relief under Order 6 Rule 17 CPC, does not call for interference of this Court by exercising power under Article 227 of the Constitution of India and it deserves to be dismissed.

In the result, the Civil Revision Petition is dismissed confirming the Order dt. 24.08.2016 in I.A.No.75 of 2016 in O.S.No.17 of 2009 on the file of Junior Civil Judge, Rayadurg.

CIVIL REVISION PETITION Nos.3536 & 5687 OF 2016

These two Civil Revision Petitions are filed under Article 227 of the Constitution of India challenging the Order dt.24.08.2016 in I.A.No.74 of 2016 and I.A.No.73 of 2016 in O.S.No.17 of 2009 filed

under Order 1 Rule 10(2) CPC and Section 151 of CPC to implead the proposed party i.e., the Tahsildar, Gummagatta Mandal and the District Collector, Anantapuram, as defendant Nos. 22 and 23 and to re-open the evidence of petitioners respectively.

The petition under Order 1 Rule 10(2) CPC is filed on the ground that unless the Tahsildar, Gummagatta Mandal, who is the custodian of the records, is impleaded, the relief of correction of revenue records i.e., Adangals etc., cannot be granted, but due to mistake, the petitioners did not implead the proposed party i.e., Tahsildar, Gummagatta Mandal and the District Collector, Ananthapuram District. Therefore, their presence is necessary to decide the real controversy before the Court and sought for the relief of impleading the proposed party referred supra.

The other Petition under Section 151 CPC is filed to reopen the evidence of the plaintiffs, in view of filing of these two applications, to adduce further evidence, in the event of allowing the above two applications.

The relief sought for in the main suit against these proposed parties is in the nature of mandatory injunction and admittedly, the suit was filed in the year 2009, but the present petitions are filed after lapse of seven years.

To implead the third party to the suit by exercising power under Order 10 (2) CPC, the petitioner/s must show that they have a direct interest. The Apex Court in *Pankajbhai Rameshbhai Zalavadia v Jethabhai Kalabhai Zalavadiya (deceased) through L.Rs and others*⁵ held that to implead a party, he must have direct interest in the subject matter of the litigation. In a suit for cancellation of sale

⁵ JT 2017(9) SC 429

deed, legal representatives of the deceased partners are necessary as the interest is directly affected on account of such impleadement. Therefore, the principle laid down in the Apex Court is that they must have direct interest in the subject matter of the litigation pending before the Court. Here in this case, the Tahsildar and the District Collector are the competent to make necessary amendments in the revenue records. The petitioners were claimed a direction by way of mandatory injunction for mutating entries, the limitation is 3 years governed by residual Article 113 of the Limitation Act. The right to sue accrued in the year 2009 and the proposed parties were not impleaded before closing evidence. According to Section 21 of the Limitation Act, where after the institution of a suit, a new plaintiff or, defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted when he was so made a party. Thus, at best, the proposed party is allowed to come on record, limitation to claim relief against them is barred, in view of Section 21 r/w Article 113 of Limitation Act. When the relief against the proposed party is barred, the petition under Order 1 Rule 10 CPC cannot be allowed. Therefore, the petition is devoid of merits and it is liable to be dismissed.

In the result, C.R.P.No.3536 of 2017 is dismissed.

In view of the disposal of C.R.P.No.3536 of 2017, this Civil Revision Petition (CRP No.5687 of 2016) is also dismissed.

Miscellaneous Petitions, if any pending, in these cases, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 25-01-2018
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P. Nos. 3498 and 3536 of 2017 & Nos.5687 2016

Dt. 25-01-2018

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