

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P. No.248 of 2018

ORDER:

Aggrieved by the order dt.08.01.2018 in I.A.No.548/2017 in O.S.No.120/2007 passed by the learned Junior Civil Judge, at Wanaparthi, dismissing the petition filed by the petitioner/plaintiff No.6 under Order VI Rule 17 CPC r/w Rule 28 Civil Rules of Practice permitting the petitioner to consequentially amend the plaint pursuant to the order in I.A.No.159/2014.

2) Heard arguments of Sri D.L.Pandu, learned counsel for petitioner and Sri Avinash Desai, learned counsel for 1st respondent.

3) Plaintiffs 1 to 5 filed suit for perpetual injunction against the 1st respondent/defendant. Pending suit, they disposed of the suit property to one Bala Swamy, who in turn sold out the suit property to the plaintiff No.6. Hence, plaintiff No.6 filed I.A.No.159/2014 to implead him as plaintiff No.6 and permit him to proceed with the suit, as plaintiffs 1 to 5 lost interest in the property. Admittedly no consequential amendment was sought for in I.A.No.159/2014 in terms of Order VI Rule 17 CPC and Rule 28 of Civil Rules of Practice and Circular Orders, 1980. However, the Trial Court allowed I.A.No.159/2014 on 27.11.2014 and permitted the petitioner to be impleaded as plaintiff No.6. The trial was completed and when the matter was in the course of arguments, the petitioner/ plaintiff No.6 filed I.A.No.548/2017 seeking permission to

add one sub-para as 3(a) to para no.3 under Order VI Rule 17 CPC and Rule 28 C.R.P in the form of consequential amendment. The Trial Court dismissed the said application on two main grounds. Firstly, that the petitioner/plaintiff No.6 filed the said application without authorization from original plaintiffs 1 to 5. Secondly, the petitioner did not file consequential amendment petition simultaneously with the impleadment petition and no reason was shown as to why he did not file the present application along with I.A.No.159/2014. The Trial Court placed reliance on the decision reported in *Sogra Begum vs. Ghousia Begum and others*¹ cited by respondent.

Hence the instant CRP.

4) The point for determination is:

“Whether there are merits in the CRP to allow?”

5) **POINT**: Rule 28 of Civil Rules of Practice and Circular Orders, 1980 lays down that an application for amendment made under Order I Rule 10, Order VI Rule 17 or Order XX of CPC, shall also contain a prayer for all consequential amendments and the Presiding Officer shall reject the application if it is not in accordance with the law or these rules. The main application under Order I Rule 10 or Order VI Rule 17 or Order XX of CPC shall contain with it the particulars of the consequential amendments sought for by the concerned party, failing

¹ 2017 (5) ALD 122

which, the Court shall reject the application. In the instant case, the petitioner/plaintiff No.6 while filing I.A.No.159/2014 under Order I Rule 10(2) r/w Section 151 CPC did not mention therein, the consequential amendments, which he now seeks for. However, the Trial Court, it appears, did not follow the procedure contemplated under Rule 28 and allowed the said application and said order being unchallenged remained confirmed. Now at the stage of arguments, the petitioner/plaintiff No.6 filed consequential amendment petition in I.A.No.548/2017 under Order VI Rule 17 CPC r/w Rule 28 C.R.P. Hence the question is whether the said amendment at this penultimate stage is legally permissible.

6) At this juncture, Order VI Rule 17 CPC is germane for consideration and it reads thus:

“17. Amendment of Pleadings.- the Court may at any stage at 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.”

The proviso says that the Court shall not allow the amendment petition after the trial has begun unless it comes to the conclusion that inspite of due diligence, the party could not have raised the matter before the commencement of the trial. We have a plethora of decisions

exhorting the Courts to consider the petition for amendment filed after trial has begun only upon the party showing cogent reasons for delay stating that inspite of due diligence, he could not seek for such amendment before commencement of trial. So the discretionary jurisdiction of the Courts to allow amendment of the pleadings after commencement of the trial is restricted and can be exercised only when the party places sufficient reasons. In ***Ajendraprasadji N.Pande and another vs. Swami Keshavprakeshdasji N. and others***², the Apex Court referring several decisions, observed thus:

“Para 26: xx xx It is to be noted that the provisions of Order VI Rule 17 CPC have been substantially amended by the CPC (Amendment) Act, 2002. Under the proviso no application for amendment shall be allowed after the trial has commenced, unless inspite of due diligence, the matter could not be raised before the commencement of trial. It is submitted, that after the trial of the case has commenced, no application of pleading shall be allowed unless the above requirement is satisfied. The amended Order VI Rule 17 was due to the recommendation of the Law Commission since Order 17 as it existed prior to the amendment was invoked by parties interested in delaying the trial. That to shorten the litigation and speed up disposal of suits, amendment was made by the Amending Act, 1999, deleting Rule 17 from the Code. This evoked much controversy/hesitation all over the country and also leading to boycott of Courts and, therefore, by Civil Procedure Code (Amendment) Act, 2002, provision has been restored by recognizing the power of the Court to grant amendment, however, with certain limitation which is contained in the new proviso added to the Rule.

² AIR 2007 SC 806 = MANU/SC/8760/2006

*Para 34: xx xx The above averment, in our opinion, does not satisfy the requirement of Order VI Rule 17 without giving the particulars which would satisfy the requirement of law that the matters now sought to be introduced by the amendment could not have been raised earlier in respect of due diligence. As held by this Court in **Kailash v. Nankhu and others** (AIR 2005 SC 2441), the trial is deemed to commence when the issues are settled and the case is set down for recording of evidence.*

In **Sogra Begum's** case (1 supra), a learned judge of this Court observed thus:

“Para 6: xx xx In such case, the proviso to Order VI Rule 17 C.P.C, by Act 22 of 2002 would not come in the way of ordering such applications, unless the petitioner explains that despite exercise of due diligence, he could not bring to the notice of this Court such facts by amendment of the plaint. The affidavit is totally silent as to exercise of due diligence, as required under the proviso to Order VI Rule 17 C.P.C, to grant leave to amend the plaint. Further, it appears from the record that the Counsel filed a petition inadvertently and the Court allowed the application under Order I Rule 10(2) C.P.C, without adverting to the purport of Rule 28 of Civil Rules of Practice. When once, the trial is commenced, the amendment cannot be permitted, except on explaining the reason that despite exercise of due diligence, the petitioner could not bring to the notice of this Court, the few facts.

7) In the light of above precedential jurisprudence, it has to be seen whether the petitioner could able to show cogent reasons as to why he has not filed consequential amendment petition within time inspite of applying due diligence. A perusal of the affidavit in I.A.No.548/2017, it must be said, is soaringly missing such reasons. It is only stated that after impleading him as plaintiff No.6, due to ignorance he could not

seek for consequential amendment. As rightly observed by the Trial Court, *ignorantia juris non excusat* (ignorance of law is not an excuse). Therefore, the order impugned does not suffer from the vice of perversity or illegality.

8) In the result, this Civil Revision Petition is dismissed. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Date: 27.06.2018

Note: Issue C.C today
(b/o)
scs

U. DURGA PRASAD RAO, J

