

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.3881 OF 2017

ORDER:

The present Civil Revision Petition is directed against the order dated 09.03.2017 in I.A. NO.76 of 2013 in O.S. No.67 of 2013 passed by the learned Junior Civil Judge, Aler, Nalgonda District, whereby and whereunder, a request made under Order - VI Rule - 17 of Code of Civil Procedure, 1973 (for short 'CPC') by the petitioner – plaintiff introducing amendment to seek the relief of declaration of title and recovery of possession over 'A- Schedule' property was, rejected by dismissing the application.

2. Heard Sri Papaih Peddakula, learned counsel for the revision petitioner, and Sri K. Jagdishwar Reddy, learned counsel for the respondents, and perused the order under revision including the material on record.

3. The learned trial Judge, extracted the provisions of Order - VI Rule - 17 of CPC in paragraph No.10, referred to the ruling in **Ramakrishnan v. Subramanian** [LAWS (MAD) 2008 11 204], and, observing that the petitioner has set up a new plea and also intends to change the nature of suit in respect of 'A - Schedule' property without even stating in the affidavit as to when the respondents - defendants allegedly illegally occupied 'A-Schedule' property and on which date the cause of action arose, and basing on the proviso, further observing

that the amendments should be allowed which are necessary for determining the real controversy in the suit provided the proposed amendment does not alter or substitute a new cause of action, dismissed it.

4. The learned trial Judge also taken into consideration that the trial was commenced and PW.1 was partly cross-examined and, at that stage, the present application was filed by PW.1, the plaintiff, and that the plaintiff did not exercise due diligence in putting forth the present relief sought to be introduced by way of amendment originally, for the reason that in the cross-examination, PW.1 admitted that the defendants are in possession of plaint A-Schedule property also and that appears to be the main ground, basing on which, the request was rejected.

5. The learned counsel for the revision petitioner, relies on a ruling of Madras High Court, where a learned single Judge in **V. Jayalakshmi v. Kasirajan** [C.R.P. (MD). PD. No.2446 of 2012 dated 28.01.2016], where having referred to as many as twenty two (22) rulings, allowed the amendment petition and even when the first appeal was pending. He has also referred to the ruling in **E.K. Palanisamy v. Manonmani** [C.R.P. (PD) No.3015 of 2011], where the relief claimed was for perpetual injunction initially and after PWs.1 to 3 were examined and DW.1 was also examined, an application was filed to amend the prayer by adding prayer for declaration of title which was allowed by the trial Court, and, in

revision, the same was affirmed. The learned single Judge relying on the decision in **B.K.N. Pillai v. P. Pillai** [2000(1) CTC 163], observing that the Hon'ble Supreme Court referred to the general rule of liberal approach and that the technicalities of law should not be permitted to hamper the Courts in the administration of justice between the parties and amendment are allowed in the pleadings to avoid uncalled for multiplicity of litigation, affirmed the order of the trial Court granting relief of amendment to the plaint seeking declaration of title by the plaintiff therein.

6. Learned counsel for the respondent strongly resisted the request basing on the proviso to Order - VI Rule - 17 CPC on the main ground that what has been admitted by PW.1 in his cross-examination that the defendants are in possession of 'A-Schedule' property, the effect of allowing the amendment, would take away the said admission, and, more particularly, when the date of cause of action is not available and when the defendants have been in continuous possession and enjoyment of 'A-Schedule' property, the right accrued to the defendants would be taken away in case the amendment is allowed, and, therefore, sought to dismiss the revision petition.

7. It is no doubt true, in his cross-examination, PW.1 admitted thus:

“The defendants are possession of the entire 15 guntas of land”

The plaint schedule properties are Ac.0-05 guntas and Ac.0-10 guntas, and, thus, the entire extent of plaint Schedules - A and B put together account for Ac.0-15 guntas. It is no doubt true, such an admission was made by PW.1 when he was cross-examined on 22.11.2013, but, on the mere ground that in case, the proposed amendment is allowed, it would take away the admission made by PW.1, the request cannot be rejected. It is also no doubt true, the revision petitioner has not stated on what date he lost possession of plaint A-Schedule property. But, these are the issues that can be gone into after additional written statement is filed and additional issues are settled for trial by the trial court. If the consequences of rejecting the request and dismissing the present application are visualised, certainly, the plaintiff would be driven to file yet another suit concerning A-Schedule property by seeking the very same relief now sought for by seeking the permission of the Court to withdraw to the extent of A-Schedule property with liberty to file a separate suit under Order - XXIII Rule 1(3) CPC, accounting for multiplication of proceedings.

8. To arrest such instances taking place which result in multiplicity of proceedings, the Hon'ble Supreme Court in **B.K.N. Pillai v. P. Pillai**, laid down that liberal approach should be the general rule particularly, in cases where the other side can be compensated with the costs and that too technicalities of law should not be permitted to hamper the Courts in the administration of justice

between the parties and amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.

9. Therefore, the present Civil Revision Petition is allowed setting aside the order under revision in I.A. No.76 of 2013 in O.S. No.67 of 2013 passed by the trial Court permitting the petitioner to introduce the proposed amendment. Law provides for filing additional written statement by the defendants and the trial Court is obligated with the duty to settle relevant additional issues keeping in view, the pleas taken and the contentions raised now touching whether there is cause of action and whether the suit is within limitation and other relevant aspects also. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the present Civil Revision Petition stand closed.

April 9, 2018.

PV

A. SHANKAR NARAYANA, J