

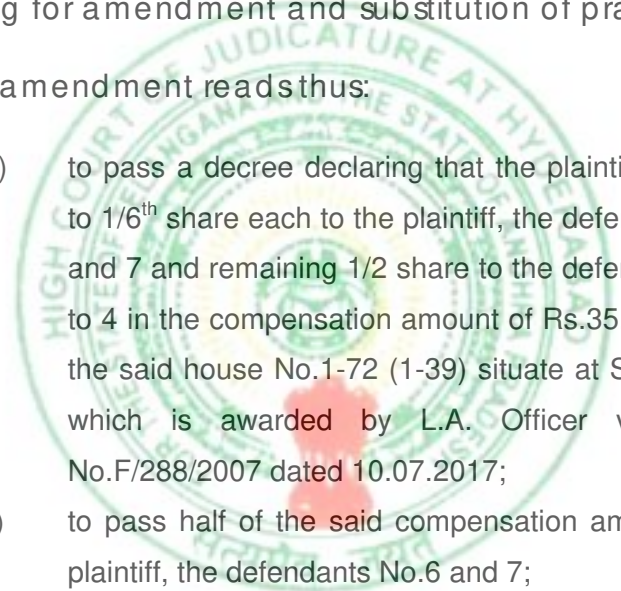
HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.1578 OF 2018

ORDER:

Heard Sri M.Rajamalla Reddy and Sri K.Vasudeva Reddy for parties.

The plaintiff in O.S.No.38 of 2011 in the Court of Senior Civil Judge, Srilla is the revision petitioner. The revision is directed against the order dated 26.02.2018 in I.A.No.117 of 2018. The revision petitioner filed the said interlocutory application under Order VI Rule 17 CPC praying for amendment and substitution of prayer portion and the proposed amendment reads thus:

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- (a) to pass a decree declaring that the plaintiff is entitled to 1/6th share each to the plaintiff, the defendants No.6 and 7 and remaining 1/2 share to the defendants No.1 to 4 in the compensation amount of Rs.35,85,263/- for the said house No.1-72 (1-39) situate at Shabashpalli which is awarded by L.A. Officer vide award No.F/288/2007 dated 10.07.2017;
 - (b) to pass half of the said compensation amount to the plaintiff, the defendants No.6 and 7;
 - (c) to pass other relief as deem fit and proper".

The respondents/defendants 1 to 4 opposed the said application and the gist of the counter affidavit is that respondents admitted that the suit schedule house in Shabashpally Village was acquired for Mid Manair Reservoir; that the Land Acquisition Officer passed Award on 10.07.2017 in favour of respondent No.1 awarding compensation for the acquired house; that the Court below directed the Special Deputy Collector/5th respondent to deposit the amount into Court; and that the amount was deposited on 01.02.2018 and the amount is lying in the Court to the credit of the suit. The respondents

denied the allegations that in view of the subsequent events the prayer in the suit has become inappropriate and it needs to be amended. The respondents dispute the division of compensation into two equal shares and payment of 1/6th share to each of defendants 6 and 7 and remaining shares to respondents 1 to 4. The respondents further stated that partition had taken place among the plaintiff, himself and his elder brothers, its relinquishment and how they came to be in exclusive possession of suit schedule house. The respondents further stated about the dispute that arose between plaintiff and respondents 1 to 4 and that the plaintiff developed second thought to extract amounts from him by filing the instant suit. The respondents prayed for dismissal of IA.

The trial Court rejected the prayer for amendment among other reasons that the provision of law quoted in the instant application is erroneous and that the proposed amendment falls under proviso to Order VI Rule 17 CPC. The affidavit is silent on the due diligence of revision petitioner in taking steps within time for amendment. The proposed amendment cannot and could not be treated as a new circumstance brought to the notice of revision petitioner since the land acquisition proceedings were issued in the year 2012. Therefore, the trial Court further held that at the first instance the revision petitioner claimed 1/2 share in the plaint schedule property ignoring the rights of respondents 6 & 7 herein and now the revision petitioner is praying for amendment to claim 1/6th share in the compensation deposited in the land acquisition proceedings.

The revision petitioner filed O.S.No.38 of 2011 for partition and separate possession of plaintiff's half share in the plaint schedule property. The plaint schedule reads thus:

"House bearing G.P. door No.1-72(M.M.R No.48) situate at Shabashpalli Village of Boinipelli Mandal bounded by

East: House of Asani Gouravva

West: House of Kommanaboina Yellaiah

North: House of Linga Mallesham

South: House of Ammaboina Lingaiah"

Respondents 1 to 4 filed written statement opposing the prayer for partition and separate possession.

The Special Deputy Collector L.A., Unit-I, SRSP Flood Flow Canal, LMD Colony, Karimnagar is arrayed as defendant No.5 in the suit. The revision petitioner refers to steps initiated by 5th respondent/defendant No.5 under the Land Acquisition Act for paying compensation due to submergence of plaint schedule property under Mid Manair Project. The plaint refers to payment of compensation or hectic steps being initiated by respondent Nos.1 to 4 for receiving the compensation from 5th respondent. The revision petitioner asserts that respondent Nos.1 to 4 have no right to claim compensation in the total extent of plaint schedule property. In the above background, the revision petitioner filed the instant interlocutory application alleging that the 5th respondent passed award dated 10.07.2017 awarding entire compensation amount payable towards compensation for acquiring the plaint schedule property. The compensation pursuant to the order of the trial Court is deposited into the Court by the 5th respondent. Now, the compensation amount is lying to the credit of the suit and, therefore,

as the plaint schedule does not continue to be the property available for partition and in its place compensation is deposited in the trial Court, the instant application for amendment is filed. The proposed amendment is absolutely necessary for effective adjudication of rights between the parties.

Mr. Rajamalla Reddy contends that the trial Court failed to exercise the jurisdiction vested in it under Order VI Rule 17 CPC and the trial Court fell in grave error by applying the proviso in a literal sense and thereby rejected the prayer for amendment. According to him, the amendment sought for firstly does not change the cause of action and secondly is necessitated on account of subsequent event dated 10.07.2017 when award under Act 30 of 2013 determining the compensation payable to the owner of the property has been made. In view of the rendering of the Award, the plaint schedule is not available in physical form for division and in its place the compensation is available for apportionment, subject to the plaintiff establishing his right. Refusing to order amendment is illegal and warrants interference of this Court under Article 227 of the Constitution of India.

Mr. Vasudev Reddy contends that the revision petitioner cannot treat the proposed amendment as necessitated by a subsequent event inasmuch as land acquisition proceedings were initiated for acquisition of plaint schedule prior to the filing of the suit. Therefore, the revision petitioner must conform to the requirements of proviso to order VI Rule 17 CPC. Even on merits, he contends that the evidence is already adduced and the amount is directed to be deposited in the

Court and, therefore, the amendment as such is unnecessary. He prays for dismissing the revision.

I have noted the submissions of both the counsel appearing for the parties and perused the record.

Now, the point for consideration is - whether the order of the trial Court refusing the amendment as made in I.A.No.117 of 2018 is valid and legal?

At the outset, this Court notices that the trial Court failed to appreciate the very subsequent event which necessitated the prayer for amendment and thus there is error going to the root of the findings recorded by the trial Court.

The plaintiff in a suit for partition approaches the Court on the foundation that separation rights of joint owners or tenants in common of their respective interest in land and setting apart such interest, so that each enjoys and possesses of allotted share in severalty. The suit for partition implies an interest in different persons in the property to be divided. In the case on hand, the plaint schedule covers H.No.1-72(M.M.R No.48). The 5th respondent initiated land acquisition proceedings. The initiation of land acquisition proceedings finally led to Award, so with Award and delivery of property to Government, the suit property is not available for partition, even if the revision petitioner establishes his right for the relief he had already made. On the other hand, subject to the revision petitioner establishing his right, what is available for partition and apportionment would be the compensation credited to suit account. The Court takes note of the

changed circumstances or subsequent facts, then it may appear that the original relief claimed has become inappropriate or, if subsequent events are taken note of and amendment permitted, the litigation gets shortened or where the subsequent events if are considered renders complete justice between the parties such amendments are favourably considered. The suit is one for partition. Till the partition takes effect and separate possession is given to each one of the parties, the Court can take note of subsequent events and allow the prayer for amendment.

In the above background, let me examine the principal objection of respondents 1 to 4 viz., that the land acquisition proceedings cannot and could not be treated as a subsequent event. This Court observes that this contention is partly correct inasmuch as the plaint refers to initiation of land acquisition proceedings by respondent No.5/defendant No.5. The initiation by itself cannot be treated as concluding the acquisition proceedings and determining the compensation payable for the property acquired by 5th respondent. Under Act 30 of 2013, the Award dated 10.07.2017 is passed. With the passing of the Award and payment of compensation, the property stands vested in the Government. In the case on hand, the Award as noticed is dated 10.07.2017. Hence, the subsequent event of passing the Award changes the character of plaint schedule property. It is for this reason to shorten the litigation between the parties and also facilitate the trial Court for passing an effective decree subject to the revision petitioner establishing his right, the proposed amendment ought to have been allowed. The point is answered accordingly.

The revision is, accordingly, allowed. The trial Court is directed to dispose of the suit within eight weeks from the date of receipt of copy of this order.

Pending miscellaneous petitions, if any, stand closed.

S.V.BHATT, J

02nd August, 2018

Note:-

CC in four weeks.

Lrkm

