

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.3264 OF 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.1448 of 2014 in O.S.No.281 of 2007 dated 04.04.2016 passed by the Principal Junior Civil Judge, Karimnagar, allowing the application filed under Order VI Rule 17 C.P.C, seeking amendment of plaint converting suit from perpetual injunction to one of recovery of possession.

The petitioner herein is the respondent and the respondent herein is the petitioner before the Trial Court

For the sake of convenience, the parties will be referred as arrayed before the Trial Court.

The petitioner filed I.A.No.1448 of 2014 under Order VI Rule 17 C.P.C seeking leave of the Court for amendment of plaint converting suit from perpetual injunction to one of recovery of possession, alleging that the petitioner is the owner and possessor of the suit land by virtue of gift deed dated 06.04.1977 vide document No.1039/1977 and in the written statement, the defendant stated that she purchased the suit property from M. Prabhakar Reddy and N. Gopaiah and constructed a house in the year 2003 and she is in possession and enjoyment of the suit property. Therefore, the petitioner intends to amend the plaint and

wants to insert prayer for recovery of possession and that the construction stated by the defendant over the suit property is unauthorised and illegal. Therefore, in order to avoid multiplicity of the suits and instead of filing a fresh suit, the proposed amendment is sought. It is further averred that the prayer for possession is within limitation and proposed amendment will not change the nature of the suit and will not introduce a new case. Therefore, the petitioner wants to amend the plaint and wants to add the prayer converting the suit from bare injunction to possession.

The respondent filed counter denying material allegations, *inter alia*, contending that the petitioner and his mother acquired 114 sq.yds of land and through registered sale deed document No.3448/94 he has sold away the entire land to one M. Prabhakar Reddy and thus the petitioner has no land to his credit as claimed by him. It is further averred that the said M. Prabhakar Reddy also purchased another extent of Ac.0.90 sq.yds and thereafter, the said Prabhakar Reddy sold the total land purchased by him measuring 204.5 sq.yds to one Nerella Gopaiah through a registered sale deed document No. 1231/99 dated 19.03.1999 and from the said Nerella Gopaiah, the respondent purchased the said land through registered sale deed No.2577/2003 dated 22.03.2003. Further, the respondent obtained permission from the gram panchayat and constructed an RCC building which is existing in the suit land since 2003. That, after lapse of 7 years from the date of institution of the suit, the plea of recovery of

possession is raised and that the petitioner has no land to his credit to claim relief of possession and that he is in possession and enjoyment of the property as on the date and prayed the Court below to dismiss the petition.

Upon hearing arguments of both the counsel, the Trial Court allowed I.A.No.1448 of 2014 permitting the petitioner to amend the plaint to claim recovery of possession due to subsequent events.

Aggrieved by the order passed by the Court below, the respondent before the Trial Court preferred the civil revision petition on the ground that, when the suit was filed in the year 2007 and having failed in his attempt to obtain interim order, as he was not found in possession of property by the Trial Court, the petitioner intended to convert the suit for perpetual injunction into recovery of possession, but he was dispossessed in the year 2013. Even before March 2013, the interim injunction application was disposed of and the Trial Court **did** not consider the facts in proper perspective and committed an error. It is also contended that the suit for bare injunction cannot be converted into suit for possession and that the objection is on account of filing this petition, disposal of the suit is held substantial and prayed to set-aside the order passed by the Trial Court.

During hearing, learned counsel for the petitioner while reiterating the contentions raised in the revision, placed reliance on the judgment of the Supreme Court in **L.C. Hanumanthappa**

(dead) rep. by his LRs v. H.B. Shivakumar¹ and on the strength of the principle laid down in paragraph 9 of the judgment, learned counsel for the petitioner contended that, belated amendment cannot be permitted to convert a suit for injunction into recovery of possession.

Whereas, learned counsel for the respondent Sri J. Kanaiah supported the order of the Trial Court in all respects and placed reliance on the judgments of the Supreme Court in **Mohinder Kumar Mehra v. Roop Rani Mehra and others²** and this Court in **Chunchu Laxminarayana (died) and others v. P. Andamma³** and relying on the principles laid down in the above judgments, learned counsel for the respondent contended that the Trial Court did commit no error, since the trial is not yet commenced till date.

As seen from the material on record, suit was initially filed for injunction simplicitor and an interlocutory application under Order XXXIII Rule 1 & 2 C.P.C was ended in dismissal. But, after dismissal, the petitioner filed I.A.No.1448 of 2014 setting up a different cause of action as if, he was dispossessed during pendency of the suit. But, the Trial Court allowed the application on the ground that it is a pre-trial amendment, referring various judgments of Supreme Court and other High Courts.

The main defence set-up by the learned counsel for the petitioner herein is that, there is abnormal delay in filing the petition and cause of action for the suit for recovery is only from

¹ AIR 2015 SUPREME COURT 3364

² (2018) 2 Supreme Court Cases 132

³ 2006 (3) ALD 747

the date pleaded in the petition and it will not relate back to the date and year of filing suit and proposed amendment will not change the nature of the claim.

In **Chunchu Laxminarayana (died) and others v. P. Andamma** (referred supra), the single Judge of this Court in paragraph 7 of the judgment held that, the narrow controversy in this civil revision petition is as to whether the petitioners were entitled to substitute the paragraph relating to the cause of action in their plaint. It hardly needs any emphasis that cause of action constitute the basis for filing of a suit, and it is the bundle of facts, which gives rise to the right to the plaintiff to file a suit. The rest of the pleadings revolve around the cause of action and in effect, elaborate and substantiate the cause of action. It is on this that the plea of limitation, entitlement of the parties, and the application of provisions of law would depend.

However, a suit for injunction, if amended to claim recovery of possession would not amount to change the nature of the claim, since the suit is for land. Therefore, this contention holds no substance.

The other contention raised by the learned counsel for the petitioner herein is that, since the amendment is belated, it cannot be allowed and placed reliance on the judgment of Supreme Court in **L.C. Hanumanthappa (dead) rep. by his LRs v. H.B. Shivakumar** (referred supra), where the Apex Court in paragraph 29 held as follows:

“.....It is clear that the doctrine of relation back would not apply to the facts of this case for the reason that the court which allowed the amendment expressly allowed it subject to the plea of limitation, indicating thereby that there are no special or extraordinary circumstances in the present case to warrant the doctrine of relation back applying so that a legal right that had accrued in favour of the defendant should be taken away. This being so, we find no infirmity in the impugned judgment of the High Court. The present appeal is accordingly dismissed.

But, this principle is not in controversy, in view of Section 21 of the limitation Act.

In later judgment of the Supreme Court in **Mohinder Kumar Mehra v. Roop Rani Mehra and others** (referred supra), relied on by the learned counsel for the petitioner, the Apex Court held that, the proviso to Order VI Rule 17 C.P.C will not come in the way of granting leave to the petitioner to amend the plaint when the suit was fixed for recording evidence of the plaintiff, but, instead of producing evidence, filed an application under Order VI Rule 17 C.P.C. Therefore, as the trial has not yet commenced, as on the date of filing petition, the amendment to plaint and amendment being pre-trial amendment shall be allowed.

A similar question came up before the Apex Court in **Raj Kumar Bhatia v. Subhash Chander Bhatia**⁴. But, the judgment did not discuss anything about the amendment of written statement, particularly, regarding the High Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, but, held that amendment sought was elaboration of what had been stated in written statement and the High Court cannot exercise inherent jurisdiction under Article 227 of the Constitution of India.

⁴ AIR 2018 SUPREME COURT 100

In **Rameshkumar Aggarwal v. Rajamala Exports Private Limited and others**⁵, the Apex Court relying on **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others**⁶, to decide the scope of proviso to Order VI Rule 17 C.P.C laid down certain guidelines for granting or denying relief under Order VI 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

⁵ AIR 2012 SC 1887

⁶ 2009(8) SCJ 401

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.

24. 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."

The present facts of the case would fall under the guidelines laid down by the Apex Court in the judgment referred supra and therefore, amendment would not take away the valuable right that accrued to the petitioner and that it would not change the nature of the suit or it would not amount to withdrawing the admission made, if any, in the pleadings. That apart, it is a pre-trial amendment and the Court should allow pre-trial amendments liberally. Therefore, the order passed by the Court below cannot be faulted to interfere with the order by exercising power under Article 227 of the Constitution of India.

However, at the end, learned counsel for the petitioner Sri Mohd. Ghulam Hussain requested this Court to direct the Trial Court to dispose of the suit, as expeditiously as possible, permitting the petitioner to raise all such pleas, including plea of limitation by way of subsequent pleadings under Order VIII Rule 9 C.P.C and urged to impose costs.

The petitioner being the defendant before the Trial Court, is entitled to file subsequent pleadings, in the event of granting leave to amend the plaint, converting the suit from perpetual injunction

to one of recovery of possession. Acceding to the request of the learned counsel for the petitioner, the petitioner herein/defendant is permitted to raise all such pleas, including plea of limitation before the Trial Court by filing subsequent pleadings under Order VIII Rule 9 C.P.C. However, the request of the learned counsel for the petitioner regarding imposition of costs cannot be accepted, because the Trial Court did not impose any costs. Further, The Trial Court is directed to dispose of O.S.No.281 of 2007, as expeditiously as possible, in any event, not later than six months from the date of receipt of copy of this order.

In the result, the civil revision petition is disposed of.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:16.03.2018

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