

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.974 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 27.10.2015 passed in I.A.No.233 of 2015 in O.S.No.1735 of 2014 on the file of the XX Junior Civil Judge, City Civil Court at Hyderabad.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the petitioners herein have filed O.S.No.1735 of 2014 against the respondents seeking perpetual injunction. During pendency of the suit, the petitioners filed I.A.No.375 of 2014, under Order XXXIX Rules 1 and 2 C.P.C. and the same was dismissed by the trial Court by making an observation that the petitioners are not in possession of the suit schedule property. While things stood thus, the petitioners filed I.A.No.233 of 2015, under Order VI Rule 17 read with Section 151 C.P.C. and Rule 28 of Civil Rules of Practice, for amendment of the plaint to include the relief of declaration, mandatory injunction, recovery of possession of the suit schedule property and other ancillary relief. The trial Court, after affording a reasonable opportunity to both parties, dismissed the petition on merits.

4. The point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order?

5. In order to resolve the issue, this Court is placing reliance on the following decisions:

(1) **South Konkan Distilleries v Prabhakar Gajanan Naik**¹

wherein the Hon'ble Hon'ble apex Court held at paragraph No.11 as follows:

11. ... It is well settled that the court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. ... It is always open to the court to allow an amendment if it is of the view that allowing of an amendment shall really subserve the ultimate cause of justice and avoid further litigation.

(2) **Abdul Rehman v Mohd. Ruldu**² wherein the Hon'ble Hon'ble apex Court held at paragraph Nos.17 and 18 as follows:

17. In *Pankaja v Yellappa*, (2004) 6 SCC 415, this Court held that if the granting of an amendment really subserves the ultimate cause of justice and avoids further litigation, the same should be allowed. In the same decision, it was further held that an amendment seeking declaration of title shall not introduce a different relief when the necessary factual basis had already been laid down in the plaint in regard to the title.

18. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.

6. It is not in dispute that the petitioners filed O.S.No.1735 of 2014 against the respondents seeking perpetual injunction in respect of the suit schedule property. It is also equally an admitted fact that the petitioners lost their possession over the suit schedule property during pendency of the suit. It is a settled principle of law that the Court can take into consideration the subsequent events also, while deciding the petitions filed under Order VI Rule 17 C.P.C.

¹ (2008) 14 SCC 632 = AIR 2009 SC 1177

² (2012) 11 SCC 341 = 2013 (1) ALD 1 (SC)

7. Learned counsel for both parties, in one voice, submitted that so far trial was not commenced. The Civil Court can allow the amendment petition even after commencement of the trial, if the exigency is so warranted. The Court has to consider whether allowing of such an amendment will alter the nature of the suit or take away vested right of the opposite party. The petitioners filed the suit for perpetual injunction in respect of the suit schedule property. During the pendency of the suit, they lost possession over the suit schedule property; therefore, the very purpose of the suit has become infructuous. Events that have taken place after filing of the suit sometimes may have direct bearing on the *lis* involved in the suit. Permitting the petitioners to convert the relief of the suit from perpetual injunction to declaration, mandatory injunction and recovery of possession, will not cause any prejudice to the respondents. If the petition is not allowed, it may cause untold hardship to the petitioners. The trial Court, without considering the scope of Order VI Rule 17 of CPC, dismissed the petition on untenable grounds. If the order of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice.

8. Taking into consideration the facts and circumstances of the case and also the principles enunciated in the cases cited supra, this Court is of the considered view that it is a fit case to allow the revision petition.

9. In the result, the Civil Revision Petition is allowed setting aside the order dated 27.10.2015 passed in I.A.No.233 of 2015 in O.S.No.1735 of 2014 on the file of the XX Junior Civil Judge, City

Civil Court at Hyderabad. Consequently, I.A.No.233 of 2015 is allowed permitting the petitioners to amend the plaint. After making necessary amendments to the plaint, the trial Court is hereby directed to give an opportunity to the respondents-defendants to file an additional written statement, if any. There shall be no order as to costs.

10. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date: 02.07.2018
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T.SUNIL CHOWDARY, J

