

**HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No.2396 OF 2018**

**ORDER:**

The present Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner - defendant No.5, questioning the order, dated 24.03.2018, in I.A. No.56 of 2018 in O.S. No.32 of 2009, passed by the learned IV Additional District Judge, Tirupati, allowing the application filed under Order VI, Rule 17 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'Code') and Rule 28 of Civil Rules of Practice, permitting respondent No.1 - plaintiff to add paragraph Nos.8 (a), 8 (b) and 8 (c) in the plaint and also item Nos.XXXIV to XXXVIII in the plaint schedule after item No.XXXIII.

2. Respondent No.1 herein, who is plaintiff in the aforesaid suit, filed a petition under Order VI, Rule 17 read with Section 151 of the Code, alleging that he filed the suit for partition of plaint schedule ancestral coparcenary joint family properties, making an allegation that the properties shown in the schedule are the joint family properties, but after filing written statement by defendant Nos.1, 5 and 6, he came to know about the false and fabrication of Wills and Codicils said to have been filed in the Court three or four months after the death of his parents, searched and tried his level best to secure particulars of money dealings of his father and mother in the banks, but the Bank officials refused to reveal the details of bank accounts

and about the deposits to third parties. He further searched and enquired at all places, such as Sub-Registrar office, Tirupati, Koduru and Renigunta, where defendant Nos.1 and 7 are supposed to deal with joint family properties. But, in spite of his diligent search, he could not get any information about the alleged Wills and Codicils said to have been executed by his parents. Therefore, he could not bring the total facts before the Court prior to commencement of trial and sought leave of the Court to amend the plaint.

3. The petitioner being respondent No.5 - defendant No.5 before the trial Court, filed a lengthy counter disputing the reason for the proposed amendment, while contending that after commencement of trial, the amendment cannot be allowed in view of the proviso to Order VI, Rule 17 of the Code introduced by Act 22 of 2002 and requested to dismiss the petition.

4. The trial Court passed the order impugned in the present revision, allowing the amendment petition permitting the petitioner therein to carry out the amendment.

5. In the present revision, the petitioner - defendant No.5 contended that the trial Court did not record any reasons with reference to Order VI, Rule 17 proviso thereto and that the order is bereft of any reasons and, therefore, the order cannot be sustained.

6. During hearing also, Sri Vedula Venkata Ramana, learned senior counsel for the petitioner, reiterated the contention while drawing the attention of this Court to the judgment rendered by the Hon'ble Supreme Court in **Mohinder Kumar Mehra v. Roop Rani Mehra**<sup>1</sup>. But, Sri P. Gangaiah Naidu, learned senior counsel, appearing for respondent No.1 supported the order in all respects while contending that the order impugned in this revision reflects the mind of the Judge about the compliance of requirement under the proviso to Order VI, Rule 17 of the Code, and the findings are sufficient to sustain the order passed by the trial Court, and requested to dismiss the revision.

7. It is an undisputed fact that the suit was filed for partition of the plaint schedule properties in the year 2009 and the trial was already commenced now the suit is coming for examination of DW.2. After examining PW.1, the petition was filed, but disposed of at the stage when DW.2's evidence is to be recorded. However, the trial has already commenced, as admitted by both counsel. But, the only question is whether respondent No.1 herein exercised due diligence in failure to bring those facts before commencement of trial, before the trial Court. But, as seen from the order under challenge, the trial Court did not record the reason strictly adhering to proviso to Order VI, Rule 17 of the Code introduced by Act 22 of 2002. Even in **Mohinder Kumar Mehra's** case, the same principle was reiterated, but what is meaning of 'due diligence' was not explained anywhere

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<sup>1</sup>. 2018 (1) ALT 27 (SC)

except in the judgment in **J. Samuel v. Gattu Mahesh**<sup>2</sup>, wherein the Supreme Court laid down certain tests as to what is 'due diligence' with reference to Order VI Rule 17 C.P.C and proviso thereto and held as follows:

“3. diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested. Duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain an anticipated relief. An advocate representing someone must engage in due diligence to determine that the representations made are factually accurate and sufficient. The term 'Due diligence' is specifically used in the Code so as to provide a test for determining whether to exercise the discretion in situations of requested amendment after the commencement of trial.

14) A party requesting a relief stemming out of a claim is required to exercise due diligence and is a requirement which cannot be dispensed with. The term "due diligence" determines the scope of a party's constructive knowledge, claim and is very critical to the outcome of the suit”

In view of the law declared by the Apex Court, the basic requirement is that whether the respondent No.1 herein made efforts to bring those facts as an ordinary prudent man, by applying principles laid down in **J. Samuel**<sup>2</sup>. Therefore, the order passed by the trial Court is without considering mandatory requirement under Order VI, Rule 17 and proviso thereto, to grant such leave to amend the plaint. Hence, the order under challenge is set aside while remanding I.A. No.56 of 2018 in O.S. No.32 of 2009 to the trial Court with a direction to pass a

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<sup>2</sup> 2012 (2) SCC 300

reasoned order strictly in compliance of Order VI, Rule 17 and proviso added thereto by Act 22 of 2002 amendment and keeping in mind the principles laid down in **J. Samuel<sup>2</sup>**, within two months from the date of receipt of a copy of this order.

8. With the above direction, the Civil Revision Petition is disposed of at the admission stage itself. However, there shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the present revision, stand closed.

**November 02, 2018**  
Mgr

**M. SATYANARAYANA MURTHY, J**

