

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1385 OF 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.174 of 2013 in O.S.No.140 of 2010 dated 20.01.2016 passed by the Principal Junior Civil Judge, Kadiri, allowing an application filed under Order VI Rule 17 C.P.C to amend the plaint by incorporating certain paragraphs in the plaint, subsequent to filing written statement by the petitioners herein/respondents before the Trial Court.

For the sake of convenience, the parties will be referred to as arrayed before the Trial Court in I.A.No.174 of 2013.

The petitioner filed O.S.No.140 of 2010 for grant of perpetual injunction contending that, an extent of Ac.1-45 cents out of total extent of Ac.5-80 cents is Govt. Dry S.No.914 i.e. Item No.1 of the suit properties and an extent of Ac.0-80 cents out of total extent of Ac.4-94 cents is Govt. Dry S.No.913 i.e. Item No.2 of the suit properties formed into one single plot and within the boundaries mentioned in the plaint schedule mentioned property. Ac.1-45 cents in S.No.914 and some other properties were ancestral and joint family properties of his father M. Gangi Reddy and his elder brother M. Chenna Reddy and the father of the petitioner divided the properties orally with his elder brother and to the oral partition and it was reduced into writing and later, executed registered partition deed dated 06.05.1963. Thus, the property described in

the schedule annexed to the plaint is the property of the petitioner and he is in continuous possession and enjoyment of the property as on the date of filing the suit. As the respondents made allegedly an attempt to infringe or invade the legal right of the petitioner, he filed O.S.No.140 of 2010 for perpetual injunction, restraining the defendants from interfering with the peaceful possession and enjoyment of the petitioner over the plaint schedule property.

In paragraph 15 of the written statement, the first respondent in the suit raised a specific contention, that the respondents are in possession and enjoyment of the property, the same is extracted hereunder for better appreciation of the case.

“15. The defendants are in possession and enjoyment of Ac.1-45 cents in S.No.914-2 and Ac.2-23 cents in S.No.913-1. The S.Nos.913-2 and 914-1 comprise the SC quarters. The plaintiff has suppressed the true facts in order to deprive the legitimate right of the defendants and filed the unjust suit to suit his false claim for an extent of Ac.2-25 cents.”

Basing on this contention in the written statement, the petitioner filed petition under Order VI Rule 17 C.P.C. seeking leave of the Court to amend the plaint by incorporating certain paragraphs in the plaint, raising several contentions, as mentioned in the proposed amendment mentioned in the petition filed under Order VI Rule 17 C.P.C.

The first respondent in the suit filed counter affidavit, denying right of the petitioner to claim amendment at this stage after filing written statement and when the petitioner asserted that he is in possession over the suit schedule property, the petitioner

cannot raise such plea by way of amendment, therefore, the petition cannot be allowed. But, the Trial Court committed an error in ordering the amendment petition granting leave to the petitioner to amend the plaint suitably. Aggrieved by the said order of the Trial Court, the present civil revision petition is preferred.

During hearing, learned counsel for the revision petitioners/respondents Sri Maheswar Rao Kuncheam reiterated the contentions raised before the Trial Court, whereas, the learned counsel for the respondent/petitioner Sri N. Aswartha Narayana supported the order of the Trial Court in all respects.

Undisputedly, O.S.No.140 of 2010 was filed for perpetual injunction claiming that the respondents are in peaceful and enjoyment of the suit schedule property, whereas, the respondent herein/petitioner asserted that he is in possession and enjoyment of the property, raising specific plea which I extracted in the earlier paragraphs. Therefore, in view of the rival claim regarding possession, it is necessary to elucidate certain facts and therefore, the respondent herein/petitioner filed petition to amend the plaint suitably before commencement of the Trial.

Though, the written statement is filed and issues were framed contrary, no trial has been commenced and recording of evidence is not yet started. Thus, the proposed amendment is only a pre-trial amendment and such amendment can be allowed liberally.

According to Rule 17 Order VI of C.P.C., the Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. However, the principles to decide petitions under Rule 17 Order VI of C.P.C. are well settled. Viz., the amendment shall not alter the basic structure or nature of the claim and that the amendment shall not take away the valuable right that accrued to the respondent or such amendment would not amount to withdrawing unequivocal admissions made in the pleadings.

Therefore, the Court is required to consider the basic principles to decide the petition. The Apex Court in various judgments, highlighted the scope of Order VI Rule 17 C.P.C and laid down certain guidelines to exercise jurisdiction under Order VI Rule 17 C.P.C, which is purely discretionary in nature.

The rule permits to amend the plaint at any stage, which includes appellate stage, if the proposed amendment is necessary to decide the real controversy between the parties. Therefore, the law is clear that an amendment can be allowed at any stage prior to amendment of C.P.C by amending Act 22 of 2002 and after amendment of C.P.C, an interdict is created by virtue of proviso to Order VI Rule 17 C.P.C.

The intention of the Legislature in incorporating Order VI Rule 17 C.P.C is to avoid multiplicity of litigations, permitting the parties to amend their pleadings appropriately.

The Court in **A. Krishna Rao v. A. Narahari Rao and others**¹, while dealing with an application under Order VI Rule 17 of C.P.C., the Court held as follows:

"Rejection of petition under Order VI Rule 17 of C.P.C. on the ground that proposed amendment is inconsistent with original plea and petitioner cannot be permitted to raise such inconsistent plea is not justified. Amendment of pleading cannot be rejected even if proposed amendment has effect of raising conflict in plea. It is for the plaintiff to justify his pleadings and prove the same with reference to evidence. Since the procedure being handmaid of justice, a party cannot be deprived of his right to raise pleadings by way of amendment unless proposed amendment results in failure of justice."

Thus, in view of the principle laid down by the Court in the above judgment, the Court can permit amendments to avoid multiplicity of the proceedings.

The Court can exercise its discretion in view of the law declared by the Apex Court in **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others**², wherein the Apex Court 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?

¹ 2015 (1) ALT 113

² 2009(8) SCJ 401

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.

(7) 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 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."

Similarly, in **Rajkumar Guruwara²** case, the Apex Court laid down the following conditions to grant application for amendment subject to certain conditions:

- (i) when the nature of it is changed by permitting amendment;
- (ii) when the amendment would result in introducing new cause of action and intends to prejudice the other party;
- (iii) when allowing amendment application defeats the law of limitation.

In the present case, the proposed amendment would not change the nature of the claim and does not amount to withdrawing unequivocal admissions made in the pleadings or would not take away the valuable right, if any, that is accrued to the petitioners herein. In such case, the Court can allow such amendment liberally, since it s a pre-trial amendment. Therefore, the Court below did commit no error in ordering petition. However, the contention of the petitioners herein is that they are in possession of the property, which is in dispute and such question has to be decided only after completion of trial. But, at this stage, while deciding an application filed under Order VI Rule 17 C.P.C, the merits of the proposed amendment cannot be looked into as per settled law. Therefore, the order impugned in this civil revision petition does not suffer from any illegality or infirmity. Hence, the civil revision petition is devoid of merits and liable to be dismissed. However, the petitioners herein are at liberty to raise any legal or factual contention based on law or fact and on raising such contention, the Trial Court is bound to decide such plea based on material, in accordance with law.

In the result, the civil revision petition is dismissed at the stage of admission.

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

JUSTICE M. SATYANARAYANA MURTHY

Date:01.02.2018

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