

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3587 OF 2017

ORDER:

The present Civil Revision Petition, under Section 115 of the Code of Civil Procedure, 1908 (for short 'Code'), is filed by the petitioner - plaintiff, challenging the order, dated 03.03.2017, passed in I.A. No.186 of 2010 in O.S. No.49 of 2005, by the Senior Civil Judge, Bapatla, whereby the petition filed under Order VI, Rule 17 of the Code to amend the schedule was dismissed.

2. The petitioner herein is the plaintiff in O.S.No.49 of 2005 before the trial Court, while respondent is the defendant. The petitioner filed a petition under Order VI, Rule 17 of the Code before the trial Court contending that he is an illiterate and a member of Muslim Religion, and his language not understandable to Hindus. He instructed his previous counsel that respondent after sale of his property settled in his house with his permission. When he was asked by his counsel to explain about the schedule, the petitioner informed about the boundary of property that was sold by his brother, who is respondent herein instead of informing the boundaries of his property. Therefore, there is a mistake in mentioning the boundaries in the schedule and requested to permit the petitioner to amend the schedule as mentioned in the petition.

3. Respondent filed counter denying the material allegations, *inter alia*, contending that the petition under Order VI, Rule 17 of the

Code after disposal of the suit is not maintainable as Order VI, Rule 17 of the Code is applicable only during pendency of the suit or an appeal, but not during execution proceedings. It is further contended that the respondent also instructed his counsel to amend the written statement by invoking the said provisions, but since the respondent is no way concerned with the schedule property, still, the petitioner's counsel vehemently objected for such amendment and by way of said petition to amend the written statement, the petitioner was enlightened, but no steps were taken and, therefore, at this stage, plaint schedule cannot be amended.

4. Upon hearing argument of both sides, the trial Court dismissed the petition on the ground that after disposal of the suit, provisions of Order VI, Rule 17 of the Code cannot be invoked and parties cannot be permitted to amend their pleadings at the execution stage.

5. Aggrieved by the said order, the present revision is filed by the petitioner – plaintiff under Section 115 of the Code on various grounds, mainly contending that at any stage of the proceedings, Order VI, Rule 17 of the Code can be invoked and the schedule property is portion of the building bearing door No.17-11-14, which jointly belongs to the petitioner and his brother – respondent, who already sold away his portion. Therefore, the property can be identified with the help of door number. He also referred to the law

declared by the Apex Court in **Desraj v. Balak Ram**¹ and **Devasayam v. P. Savitramma**², **K. Rani v. Hanumaiah Goud**³ and **Peethani Suryanarayana v. Repaka Venkata Ramana Kishore**⁴ and other judgments. On the strength of the principles laid down therein, the learned counsel for the petitioner sought to set aside the order passed by the trial Court in I.A. No.186 of 2010, dated 03.03.2017 and allow the petition to amend the schedule granting leave under Order VI, Rule 17 of the Code.

7. During hearing, the learned counsel for the petitioner while reiterating the grounds, drawn the attention of this Court to the judgments reported in **K. Rani**³, **Peethani Suryanarayana**⁴, **Fathima Bi v. Julekha Bi**⁵ and **V.I.P. Emporium v. M/s. TCI Finance Ltd., Secunderabad**⁶ in support of his contention and on the basis of the principles laid down therein, he requested to set aside the order under challenge.

8. Whereas, the learned counsel for the respondent would draw attention of this Court to the judgment in **Nagaraju v. K. Rami Reddy**⁷ contending that Executing Court cannot go beyond the decree and cannot permit the plaintiff to amend the schedule property in execution petition and supported the order passed by the trial Court in all respects and requested to dismiss the revision.

¹. 2007 (4) ALD 6 (SC)

². 2006 (1) ALD 73

³. 2014 (6) ALD 387

⁴. (2009) 11 SCC 308

⁵. 2016 (5) ALD 468

⁶. 2012 (3) ALT 165

⁷. 2011 (4) ALT 75

9. The petitioner filed the suit for recovery of possession of plaint schedule property against the respondent, who is his own brother, describing the boundaries of the schedule as follows:

East : Joint House Wall

South : Shaik Mahaboob Site

West : Shaik Khasim Saheb and others

North : Municipal Road

After obtaining decree, for delivery of property, the petitioner filed an execution petition and realized that there is a typographical mistake that occurred in the boundaries of the schedule annexed to the plaint and, therefore, sought leave of the Court to amend the schedule invoking Order VI, Rule 17 of the Code with the following boundaries,

East : Joint House gally

South : Shaik Mahaboob Site

West : Joint house wall

North : Municipal Road,

on the ground that his counsel did not understand the Urdu and the petitioner was unable to understand Telugu, and thereby there is a mistake in mentioning the boundaries of the property, but the trial Court dismissed the petition on the sole ground that in execution proceedings after passing a decree, the petitioner is not entitled to invoke the aforesaid provisions.

10. Order VI, Rule 17 of the Code deals with amendment of pleadings. 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, and the provision is incorporated by Act 22 of 2002 to Order VI, Rule 17 of the Code. The pleadings shall mean plaint or written statement

11. But, it is the case of the respondent that house bearing door No.17-11-14 consists of two portions, one portion fell to the share of the respondent and the other was allotted to the petitioner in the partition, but his brother - respondent sold away the same. However, the petitioner is in possession of the property that fell to his share and suit was filed only for recovery of possession of the property in possession of respondent who is in occupation of the property that fell to the share of petitioner and, therefore, the property could be identified with the door number and mentioning of door number is sufficient in regular course of events. But, when the property consists of two portions, a difficulty arose with regard to identity. On strict interpretation of Order VI, Rule 17 of the Code, it can be invoked at any stage, thus there is fetter on the power of Court to grant leave to amend pleadings; the word 'at any stage' includes stage of execution. More over, Executing Court cannot go beyond the decree and permit the parties to amend the pleadings at the execution stage. But, the learned counsel for the petitioner, mainly relied on the judgment of Apex Court in **Peethani Suryanarayana**⁴, where the Apex Court held that Order VI, Rule 17 of the Code can be invoked even after passing a decree, and when no prejudice is caused to the other side, correction

of typographical mistake as to subject matter of suit for partition where amendment of plaint was a mere typographical error can be permitted since it is a mere formality. But, the judgment is of the year 2009, the Court did not take into consideration the effect of proviso annexed to Order VI, Rule 17 of the Code which created interdict to order amendment after commencing the trial. But, the present facts of the case are worse than the commencement of trial since the trial was completed and decree was passed and execution proceedings were initiated and in execution proceedings, a delivery of warrant was issued, then the petitioner detected such mistake and then only he invoked the jurisdiction of Court under Order VI, Rule 17 of the Code for amendment of plaint schedule.

12. The learned counsel for the petitioner also placed reliance on the judgment in **K. Rani**³, wherein a learned Single Judge of this Court held that application under Order VI, Rule 17 of the Code can be ordered to correct typographical mistake in describing western boundary in plaint 'B' Schedule and consequential amendment of decree. In another judgment in **Fathima Bi**⁵, another learned Single Judge of this Court held that in view of the law laid down by this Court in 2007 (1) ALD 367 as well as the Apex Court in (2009) 2 SCC 294, the Executing Court cannot travel beyond the decree passed in original suit. Even according to the respondent also, boundaries are not tallying and for any mistake crept in the decree, it is for the decree-holder to file application under Section 152 of the Code for

amendment of judgment and decree and also plaint, which passed decree. But, without filing the same, the Executing Court cannot order delivery of possession of property within the boundaries other than mentioned in the original suit and decree, and decree was passed based on such boundaries mentioned in the plaint. Though the Court considered the scope of Order VI, Rule 17 of the Code and powers of the Executing Court, but made an observation that such mistake in the judgment and decree and also in the plaint can be rectified by invoking Section 152 of the Code. But, this cannot be a correct legal proposition, and at best, to amend the plaint, the petitioner can invoke only Order VI, Rule 17 of the Code, or at best such mistake can be rectified by invoking Section 153 of the Code, which deals with General power to amend. According to Section 153 of the Code, the Court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceedings. Taking advantage of this provision, the learned counsel for the petitioner contended that the petition can be treated as a petition under Section 153 of the Code though filed under Order VI, Rule 17 of the Code. Scope of Order VI, Rule 17 and Section 153 of the Code are different. But, the learned Single Judge of this Court in **V.I.P. Emporium**⁶, while considering the scope of Section 153 of the Code, held that the said provision is wide enough to comprehend any proceeding including execution proceedings. Therefore the Court has

inherent power to do justice by allowing rectification of errors of clerical in nature. In the said judgment, there is no dispute regarding identity of property, but amendment sought only to rectify mistake occurred in describing the boundaries in plaint schedule and the consequent mistake taken place in drafting the decree, and such mistake can be rectified exercising power under Section 153 of the Code. Mere quoting the wrong provision of law in the petition is not a ground to deny the relief for the petitioner if he is otherwise entitled to claim such relief. Therefore, the petition filed before the trial Court shall be treated as a petition under Section 153 of the Code though it was filed under Order VI, Rule 17 of the Code. By applying the principles laid down in **V.I.P. Emporium**⁶, the petitioner can be permitted to amend the schedule, and that too this Court is bound by the judgment of this Court which is a coordinate bench. In **Nagaraju**⁷, a learned Single Judge of this Court held that filing an application under Section 153 of the Code can be entertained for amendment of schedule after termination of E.P. proceedings, whereas application under Order VI, Rule 17 of the Code can be entertained only when the suit or execution proceedings are pending. When the law is totally in favour of the petitioner, dismissal of the application on the ground that the petitioner herein is not now entitled to invoke Order VI, Rule 17 of the Code as held by the trial Court appears to be incorrect as the petitioner is entitled to claim such relief under Section 153 of the Code though not under Order VI, Rule 17 of the Code. Consequently, the order passed by the trial Court is set aside.

12. Accordingly, the Civil Revision Petition is allowed, and the order, dated 03.03.2017, under challenge passed by the trial Court in I.A. No.186 of 2010 in O.S. No.49 of 2005, is hereby set aside in view of the law declared by the Courts referred above, and the petitioner is permitted to amend the schedule as claimed in the petition. No order as to costs.

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

October 26, 2018
Mgr

M. SATYANARAYANA MURTHY, J

