

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.3383 of 2018

ORDER:

1) Assailing the order, dated 07.02.2018, passed in I.A.No.113 of 2018 in O.S.No.125 of 2015 on the file of the Senior Civil Judge, Ramachandrapuram, wherein an application filed under Order VI Rule 17 of C.P.C., and Rule 28 of the Civil Rules Of Practice, seeking amendment of plaint, was allowed, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The respondent/plaintiff filed the above suit seeking partition against the 1st defendant. During pendency of suit, the 1st defendant died and the petitioners, who are legal representatives of the 1st defendant, were added as defendants 2 to 4. In view of the death of the 1st defendant, the respondent/plaintiff filed I.A.No.113 of 2018 seeking amendment of the prayer to declare his right, title in respect of the plaint schedule property. Hence, he filed the present petition.

3) The respondents filed counter denying the averments in the affidavit filed in support of the petition. It is stated that the plaint schedule property is self-acquired property of 1st defendant. As the plaintiff is not legal heir, he is not entitled to

claim either for declaration or partition. The plaintiff did not file the correct valuation certificate. It is further stated that previously the suit was amended twice and the present amendment petition is not maintainable.

4) After considering the rival submissions made, the trial Court allowed the petition. Challenging the same, the present Civil Revision Petition is filed.

5) Learned counsel for the petitioners would submit that already the prayer in the plaint was amended twice and that the nature of the suit will get altered or changed, if altered again. It is further stated that as per the present market value certificate of the plaint schedule property, the trial Court has no jurisdiction to entertain the suit.

6) Learned counsel for the respondent/plaintiff would submit that this amendment is only sought to be made to award any future complications and that no prejudice would be caused to the defendants, if allowed.

7) Before proceeding further it would be appropriate to refer to Order VI Rule 17 of C.P.C., which reads as under:

“17. 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.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

8) Admittedly, the suit is posted for defendant's evidence, but under Order 6, Rule 17 of the Code, the court may, at any stage of the proceedings, allow either party to amend his pleadings and all such amendments shall be made as may be necessary for the purposes of determining the real questions in controversy between the parties.

9) While ordering an amendment, the Court has to see whether such amendment is imperative for proper and effective adjudication of the case; whether the amendment sought is a bona fide one or made with a mala fide intention; and whether any prejudice would be caused to the other party which cannot be ultimately compensated in terms of money. The Court must also consider as to whether the amendment if refused, would lead to injustice or multiple litigation. One more principle to be followed while considering the request for amendment is as to whether it would change the character or nature of the case.

10) In *Pankaja v. Yellappa*¹ the Apex Court held as under:

¹ (2004) 6 SCC 415

“If the granting of an amendment really subverts the ultimate cause of justice and avoids further litigation, the same should be allowed. 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.”

11) In *Sampath Kumar v. Ayyakannu and another*² the Apex Court was faced with an application for amendment made 11 years after the date of the institution of the suit to convert through amendment, a suit for permanent prohibitory injunction into a suit for declaration of title and recovery of possession. Dealing with the said aspect, the Apex Court held as under:

“In our opinion, the basic structure of the suit is not altered by the proposed amendment. What is sought to be changed is the nature of relief sought for by the plaintiff. In the opinion of the Trial Court it was one to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the Trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiffs revision. We fail to understand, if it is permissible for the plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be permitted to be incorporated in the pending suit. In the facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings.

Order 6 Rule 17 of the CPC confers jurisdiction on the Court to allow either party to alter or amend his

² (2002) 7 SCC 559

pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-form and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In former case generally it can be assumed that the defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No strait-jacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.”

12) A perusal of the material on record would show that the suit is filed for partition of the plaint schedule property against the 1st defendant. After filing written statement, the 1st defendant died. During his life time he executed a settlement deed in favour of defendants 2 and 3 for part of the plaint schedule property. Since the 1st defendant has no issues, and the plaintiff is the sole legal heir of the 1st defendant, he is entitled for the remaining part of the plaint schedule property. Hence, in view of the judgments referred to above and having regard to the facts and

circumstances of the case, I see no illegality or irregularity in the impugned order.

13) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

14) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

17.09.2018
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