

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3326 of 2018

ORDER:

1) Heard Sri G.Rama Gopal, learned counsel for the petitioner and Sri T.V.S. Prabhakara Rao, learned counsel for the respondents. Perused the record.

2) Assailing the order dated 09.05.2018 passed in I.A.No.165 of 2018 in O.S.No.138 of 2011, wherein an application filed under Order 6 Rule 17 read with Section 151 CPC and Rule 28 of Civil Rules of Practice praying to add para No.7(a) to 7(e), and other necessary consequential amendments in valuation para, came to be rejected, the present C.R.P. is filed under Article 227 of the Constitution of India.

3) The petitioner/plaintiff filed O.S.No.138 of 2011 seeking permanent injunction. Initially one Gandrothu Varalakshmi filed an application to implead herself as one of the defendants, which was allowed and she was added as the second defendant. Subsequently, the second defendant filed a written statement. The second defendant also filed O.S.No.1 of 2012 seeking permanent injunction in respect of the very same schedule property herein, claiming the said property under the guise of settlement deeds dated 30.07.2008 and 10.10.2007 said to have been executed by Madireddy Nageswara Rao and Narayana Rao, who are claiming the schedule property under the

link document dated 29.03.1989 said to have been executed by Vinjamuri Bhaskara Rao S/o. Rama Rao. In the light of the written statement filed by the second defendant, the petitioner came to know that the title of the property is in dispute and hence he seeks declaration of the title. As per the averments in the petition filed in support of the said I.A., if the amendment is allowed there would be no change in the nature of suit, variations in the plaint pleadings and that no prejudice would be caused.

4) The first defendant viz., Bandi Eswara Rao remained ex-parte. While the second defendant filed her counter contending that though a caveat came to be filed in the year 2011, the plaintiff filed a suit for injunction against the first respondent and succeeded in obtaining ex-parte injunction. On coming to know about it, she filed O.S.No.1 of 2012 against the petitioner herein and also filed a petition, to implead herself in O.S.No.138 of 2011, which was allowed. A written statement came to be filed by the second defendant on 28.03.2012. In view of this fact, it is urged that an amendment for declaration ought to have been filed within three years from the date when the petitioner acquired knowledge regarding the dispute of title. Without doing the same, nearly six years later, an I.A. came to be filed for amendment of the plaint. Having regard to the fact in issue, it is pleaded that when the cause of action for amendment is subsequent to the filing of O.S.No.1 of 2012 and not on the date of

filing of O.S.No.138 of 2011, the plaintiff is not entitled to claim amendment to the plaint by introducing disputed facts, which were not there by the date of filing of suit. Hence, it is pleaded that the petitioner has to file a fresh suit for appropriate reliefs after withdrawing the suit for injunction. It is further stated that the proposed amendment ousts the jurisdiction of the court since the value of the property is more than the value assessed in the injunction suit. Having regard to all the circumstances, he prays to dismiss the petition.

5) Considering the rival submissions, the trial court rejected the request of the petitioner. Challenging the same the present appeal came to be filed.

6) Order 16 Rule 17 CPC deals with amendment of pleadings. As per the said provision, 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 the trial." This proviso came to be introduced in the year 1999. However, the said

amendment received the assent of the President on 30.12.1999. The C.P.C. (Amendment) Act, 2002, reintroduced Rule 17 by adding proviso to it.

7) Traditionally, the courts have been making a liberal approach in allowing the application filed for amendment to the pleadings. After the amendment in the year 2002, the Apex Court demarcated a line between the pre-trial and post-trial amendments and held that in the former cases, the courts must be more liberal in allowing the amendment of pleadings as the opposite party will have more opportunities to rebut the amended pleadings than in the latter cases. While holding that the delay in filing the application for amendment by itself does not constitute a ground for its rejection, it has been held that the delay shall not be reckoned from the date of filing the suit but it should be calculated by taking into account the stage to which the hearing in the suit has proceeded.

8) The Apex Court in **Rajesh Kumar Agarwal Vs. K.K. Modi**¹, held that the underlying object of Rule 17 of Order VI CPC is that the Court should try the merits of the case that come before them and should consequently allow all amendments that may be necessary for determining the real questions in controversy between the parties provided it does not cause injustice or prejudice to the other side. The Apex Court, on the analysis of the provision, held that it

¹ 2006(3) ALD 61

consists of two parts; that the first part is discretionary and the second part is imperative and enjoins the Court to allow all the amendments which are necessary for the purpose of determining the real questions in controversy between the parties.

9) In **M/s. Modi Spinning & Weaving Mills Co. Ltd. and another Vs. M/s. Ladha Ram & Co.**² the Supreme Court while holding that inconsistent pleas can be made in the pleadings, however, held that while allowing such pleadings, a party shall not be allowed to displace the pleadings constituting admissions made by the defendants in the written statement. It has held that if such amendment is permitted, the plaintiff will be irretrievably prejudiced by being denied the opportunity of extracting the admission from the defendants.

10) In **Usha Devi Vs. Rijwan Ahmad and others**³ the Supreme Court, while holding that Order 6 Rule 17 CPC confers wide powers and unfettered discretion on the Courts for allowing the amendments, also construed the words after the trial has commenced in the proviso to Rule 17 by limiting their amplitude only to the final hearing of the suit i.e., examination of witnesses, filing of documents and addressing of arguments.

² (1976) 4 SCC 320

³ 2008(3) ALD 1(SC)

11) In **Surender Kumar Sharma Vs. Makhan Singh**⁴ the Supreme Court held that mere delay and laches cannot be a ground for rejecting the amendment if the Court is satisfied that by allowing the amendment, the real controversy can be resolved.

12) Summarizing the law laid down, a learned Single Judge of this Court in **G.S.Prakash v. Polasa Hanumanlu**⁵ observed as under:

"17. I do not intend to burden this Judgment with myriad precedents on the subject. On a careful analysis of the judicial precedents referred to above, it needs to be held that as a general rule, the Courts have to adopt a liberal approach in considering the applications for amendment of pleadings, subject to certain exceptions. Without intending to be exhaustive, but only illustrative, broadly stated, instances on either side are stated hereunder :

Instances where amendments have to be allowed :

(a) All pre-trial stage (prior to examination of witnesses) amendments which do not alter the nature and character of the suit and substitute or introduce new cause of action;

(b) In cases of pending or post-trial amendments, the Court must allow the same subject to the applicant, in addition to satisfy the condition (a) supra, satisfying two other conditions, viz., (i) that the amendment is necessary for determining the real questions in controversy and (ii) that despite due diligence, the applicant could not move the application at an earlier stage;

(c) Where, the proposed amendment will not work injustice or cause prejudice to the other side;

⁴ (2009) 10 SCC 626

⁵ 2015(1) ALD 270

(d) Where, by the proposed amendment the position of the other party will be altered, but the same can be compensated by costs;

(e) Even where the proposed amendment introduces inconsistency in pleadings, if by the proposed amendment, the party does not seek to resile from the admissions if any made in the original pleadings;

(f) Where the proposed amendment relates to a time barred claim and the Court is satisfied that allowing such amendment really sub-serves the cause of justice and avoids further litigation.

Instances where amendments have to be refused:

(i) Where by the proposed amendment the party seeks to alter the nature, character and constitution of the suit (mere inconsistent pleadings may not, in all cases, change the nature and character of the suit) or substitute cause of action or introduce a distinct cause of action;

(ii) where the valuable defence by way of admissions by a party has accrued to the opposite party and by the proposed amendment the party intends to resile from such admissions;

(iii) where the position of the other party will be altered by the proposed amendment and the injury caused to him by such alteration could not be compensated in costs.

(iv) Where the proposed amendment lacks bonafides and is far too belated and the party seeking the amendment was not diligent in approaching the court;

(v) Where a fresh suit, if instituted on the proposed amendments, will be barred by law;"

13) Keeping in view of the law laid down, it is to be noticed as to whether the request of the petitioner for amendment of the plaint can be accepted? Learned counsel for the respondent would contend that the trial in this case has already commenced and as such question of allowing the amendment would not arise, more so when the said court would lose the jurisdiction and the earlier order of clubbing both the cases, made at the instance of both the parties, would become otiose.

14) As seen from the record, originally the suit in O.S.No.138 of 2011 came to be filed seeking injunction against the first respondent and an *ex parte* injunction was obtained. On coming to know about the same, the second defendant, who claims to be having title over the property got impleaded in the suit and also filed her written statement in the month of March 2012 itself. Apart from that she also filed a suit in the year 2012 for declaration of title. Since the written statement came to be filed in the present suit, steps ought to have been taken for amendment of the plaint at that point of time itself. The plaintiff kept quiet for nearly six years, without raising his little finger. After commencement of the trial, the present application came to be filed for amendment of cause title. Admittedly, if the amendment is allowed, not only the jurisdiction of the court gets ousted due to its valuation, but also the nature of the suit would get changed. It is also brought on record that long prior

to filing of the suit both the parties filed an application for clubbing of O.S.No.1 of 2012 and O.S.No.138 of 2011 which was allowed and a common trial was directed to be conducted. It is not as if the plaintiffs are not aware about the claim made by the second defendant over the property. Way back in the year 2012 itself, the second defendant filed her written statement claiming title over the property. No reasons are forthcoming as to why the plaintiff kept quiet without seeking an amendment.

15) In some what similar circumstances, a learned Single Judge of this Court in **Muthukur Gram Panchayat, SPSR Nellore District v. Kakuturu Ramesh Reddy and others**⁶ observed that a request for amendment of the plaint cannot be accepted as the same came to be filed at a very belated stage. It was also a case where a written statement was filed in the year 2008. For a period of two years, the plaintiff kept quiet and just after the commencement of the trial, an application came to be filed seeking permission to amend the plaint. Since no explanation is forthcoming, as to why the plaintiff therein kept quiet knowing the reason for which the amendment was sought for, set-aside the order of the trial court.

16) Viewed from any angle, I do not find any irregularity or illegality warranting interference in the order passed by the court below and the C.R.P. is liable to be dismissed.

⁶ 2014(1) ALD 444

17) Accordingly, the Civil Revision Petition is dismissed. No costs.

Miscellaneous Petitions pending if any in this C.R.P., shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:28.08.2018

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