

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.3631 of 2018

ORDER:

This civil revision petition, under Article 227 of the Constitution of India is filed by the unsuccessful petitioners - plaintiffs assailing the order, dated 15.09.2017, of the learned Senior Civil Judge, Addanki, passed in IA.no.927 of 2017 in OS.No.143 of 2008.

2. I have heard the submissions of Sri I. Koti Reddy, learned counsel appearing for the revision petitioners – plaintiffs [‘the plaintiffs’, for brevity], and of Sri K. Mohan Rami Reddy, learned counsel appearing for the respondent – defendant [‘the defendant’, for brevity]. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows: - “The 1st plaintiff is the mother and the plaintiffs 2 & 3 are the sisters of the defendant. They brought the afore-said suit for partition, *inter alia*, claiming that the plaint schedule properties are joint family properties and that they are to be divided into two shares and that the defendant is entitled to one such share and that the plaintiffs are entitled to a 1/4th share each in the remaining half share. The defendant is resisting the suit. During the pendency of the suit, the 1st plaintiff died. Contending, *inter alia*, that the 1st plaintiff, who is the mother of the parties, executed a Will, dated 12.09.2007, in a sound and disposing state of mind, the plaintiffs 2 & 3 filed the afore-stated Interlocutory Application to permit them to amend the plaint as stated in the petition list to enable them to claim larger shares than originally claimed in the plaint in view

of the death of the mother-the 1st plaintiff during the pendency of the suit and the bequests in her said Will. The said application was resisted by the defendant by filing a counter, *inter alia*, contending that the alleged Will is not executed by the mother and that if the amendment is permitted it would change the cause of action as well as the nature of the suit and that the plaintiffs came to Court claiming that the plaint schedule property is a joint family property, but, now they are claiming that the mother had executed a Will and that, therefore, the plaintiffs are not entitled to seek amendment of the plaint and that if the amendment is permitted, it causes prejudice to the rights and contentions of the defendant. On merits, and by the order impugned, the trial Court dismissed the petition of the plaintiffs. Therefore, the plaintiffs 2 &3 are before this Court.²

4. Learned counsel for the plaintiffs, having reiterated the pleaded case of the plaintiffs 2 &3, contended that in a suit for partition, on account of the death of 1st plaintiff-the mother and the execution of a Will by her, there is an increase in the shares of the daughters, who are the plaintiffs 2 & 3, and that in view of the said subsequent event and changed circumstances, it has become necessary for the plaintiffs 2 & 3 to make a request for permission to amend the plaint and that such a request for an amendment of the plaint in a suit for partition, based on changed circumstance and subsequent events, does not either change the cause of action or the nature of the suit and that the suit remains a suit for partition and hence, the order of the trial Court is erroneous and is liable to be set aside.

5. Learned counsel for the defendant while supporting the orders of the trial Court, *inter alia*, contended that the plaintiffs 2 & 3, having first pleaded that the property is a joint family property and that the defendant is entitled to a half share in the said properties and that they are entitled to a $1/4^{\text{th}}$ share each in the remaining half share, are now changing their version and are claiming larger shares than originally claimed in the plaint by relying upon the alleged Will of the mother and that the proposed amendment, if permitted, changes not only the cause of action but also the nature and character of the suit, and would also cause prejudice to the rights and contentions of the defendant. He would also submit that the suit is at the stage of hearing arguments by the trial Court.

6. I have given detailed and thoughtful consideration to the submissions.

7. A perusal of the plaint, a copy of which is filed along with the material papers, shows that the plaintiffs came to Court seeking partition of the plaint schedule properties claiming *inter alia* that the plaint schedule properties are joint family properties and that the same are to be divided into two halves and that the defendant is entitled to one such half share and that they are entitled to a $1/4^{\text{th}}$ share each in the other half. However, the 1st plaintiff, who is the mother of the plaintiffs 2 & 3 and the defendant, died during the pendency of the suit. According to the plaintiffs 2 & 3, the 1st plaintiff, their mother, executed a Will in respect of her share of property in their favour in a sound and disposing state of mind. Therefore, they are seeking amendment of the plaint to enable them to bring to the notice of the trial Court the fact of execution of Will by their mother and their entitlement to a larger share in the plaint schedule

properties than originally claimed in view of the death of the 1st plaintiff, the mother, and the bequests in her said Will in their favour. In the considered view of this Court, in a suit for partition, the proposed amendment of plaint being sought on the basis of subsequent events that are stated by the plaintiffs 2 & 3, if permitted does not either change the cause of action or the nature & character of the suit. It is well settled that the shares of the sharers in a joint family are liable for either increase or decrease on account of deaths and births in the family and that the Courts are always entitled to take note of such subsequent events and mould the reliefs while granting the decree and allotting the shares to the shares. Be it noted that lack of 'due diligence' also cannot be attributed to the plaintiffs 2 & 3 as the proposed amendment is based on subsequent events. Further, in the facts and circumstances of the case permitting the proposed amendment sought for by the plaintiffs 2 & 3 is necessary since it is *bona fide* and as is also imperative for proper & effective adjudication of the case and giving a quietus to the dispute once and for all. Further, refusal to permit the proposed amendment would in fact lead to multiplicity of suits. It is also well settled that the merits of the averments sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing a prayer for amendment of the pleading. It is needless to state that it is for the trial Court to deal with the merits of the averments incorporated by way of amendment at an appropriate later stage. And, that stage would come after the plaint is permitted to be amended and the defendant is permitted to file additional pleading in answer to the pleading incorporated in the plaint by way of amendment. However, the trial Court erroneously dismissed the application of the plaintiffs 2 & 3, without examining

the matter in proper perspective, and observing in its order that in view of the original claim related to the extent of shares in the plaint, the plaintiffs are not entitled to seek amendment of the plaint and claim larger shares than originally claimed in the plaint, and that, therefore, the amendment, if permitted, changes the nature and character of the case. However, the trial Court erroneously ignored the fact that the first plaintiff – the mother of the parties, died during the pendency of the suit and that even in the absence of her Will, the plaintiffs 2 & 3 would be entitled to larger shares than originally claimed in the plaint, in the event their original contention that the plaint schedule properties are joint family properties and that they are entitled to a share in the said properties deserves to be accepted after full fledged trial. Viewed thus, this Court finds that the order of the trial court is unsustainable and is liable to be set aside having regard to the nature and character of the suit and also the subsequent events, which necessitated the plaintiffs 2 & 3 to make a request for the amendment of the plaint.

8. On the above analysis, this Court finds that the plaintiffs 2 & 3 are entitled to seek amendment of the plaint to bring the subsequent events to the notice of the trial Court and that in the facts and circumstances of the case and for the reasons aforesaid it is just and fair to permit the amendment of the plaint.

9. In the result, the Civil Revision Petition is allowed; and, the order impugned is set aside. As a sequel, IA.No.927 of 2017 is allowed. The trial Court is now directed to permit the plaintiffs 2 & 3 to carry out the necessary amendments and consequential amendments to the plaint and then afford an

opportunity to the defendant to file additional pleading in answer to the pleading incorporated in the plaint by way amendment and then proceed to settle additional issues as may be necessary and then decide the additional issues as well as the issues already settled in the suit, in accordance with the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

05.09.2018
Vjl

