

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CIVIL REVISION PETITION No.4150 of 2018****ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the legality of the Order in I.A.No.289 of 2017 in O.S.No.41 of 2017, dt.13.04.2018, whereby the petition filed under 6 Rule 17 CPC, seeking leave of the Court to amend the plaint, converting the suit for injunction simplicitor to declaration, was dismissed, on the ground that the proposed amendment would change the basic structure of the suit.

The petitioner/plaintiff filed suit for perpetual injunction claiming that he is absolute owner of the subject property and that he is in possession and enjoyment of the property, alleging that the respondents are making an attempt to infringe or invade the legal rights of the petitioner/plaintiff and therefore, he filed a petition under Order 6 Rule 17 CPC, in view of the subsequent events of filing Written Statement wherein the defendants denied the title of the petitioner while setting up independent title on the defendants. Therefore, such subsequent events, more particularly, the allegations made in the Written Statement, led the petitioner to file under Order 6 Rule 17 CPC seeking leave of the Court to amend the plaint, but the trial Court dismissed the petition on the sole ground that if the proposed amendment is permitted granting leave to amend the plaint, it would amount to change the basic structure of the suit.

Aggrieved by the Order under challenge, the present revision is filed on various grounds.

During hearing, learned counsel for the petitioner/plaintiff submitted that it is a pre-trial amendment and such amendments can

be allowed as a matter of routine; whereas the learned counsel for the respondents/defendants supported the Order of the trial Court in all respects and prayed to dismiss the petition.

A bare look at the facts of the case on hand, the trial in the suit No.41 of 2017 is not yet commenced, but before commencement of the trial, the petitioner/plaintiff sought leave of the Court to amend the plaint to convert the suit for injunction simplicitor into a suit for declaration and though the proposed amendment is allowed, still it is a suit for a land, and therefore, such pre-trial amendment can be allowed as a matter of routine, in view of the language used under Order 6 Rule 17 CPC i.e., more specifically 'the words at any stage of the trial or enquiry in any proceedings', and these words permits the Courts to grant leave to the parties to amend their pleadings, but in view of the rider under proviso to Order 6 Rule 17 CPC by Act 22 of 2002, the trial is commenced, the petitioners have to satisfy the Court that despite exercising due diligence, he could not bring the facts on record before the commencement of the trial, but the proviso to under Order 6 Rule 17 CPC has no application since it is a pre-trial amendment.

The Apex Court in **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others**¹, laid down certain guidelines for ordering amendments and by applying principle laid down therein to the present facts of the case, it is liable to be set aside since it is a pre-trial amendment. However, the counsel for the respondent at this stage drawn the attention of this Court to the proposed amendment, but this Court cannot decide the proposed amendment while deciding an application under Article 227 of the Constitution of India. As the trial Court committed an error in dismissing the petition on the ground

¹ 2009 (10) SCC 84

that it would amount to change of the basic structure, which is erroneous on the face of the record, in view of judgments reported in **State of Andhra Pradesh v. Pioneers Builders² and Rajkumar Gurawara (Dead) Thr. Lrs vs M/S. S.K.Sarwagi & Co. Pvt. Ltd³**. Therefore, this view is not correct and consequently, the Order passed by the trial Court is liable to be set aside while permitting the petitioner/plaintiff to amend the pleadings appropriately as claimed in the petition.

Accordingly, this Civil Revision Petition is allowed setting aside the Order dt. 13.04.2018 in I.A.No.289 of 2017 in O.S.No.41 of 2017 passed by the Junior Civil Judge at Jadcherla, while permitting the petitioner to amend the pleadings appropriately as claimed in the petition. No costs.

As a sequel, miscellaneous Petitions, if any, shall stand closed.

A large, faint, circular watermark seal of the High Court of Andhra Pradesh, Hyderabad, is centered in the background. It features the text 'HIGH COURT OF ANDHRA PRADESH, HYDERABAD' around the perimeter and 'सत्यमेव जयते' at the bottom. In the center is a red emblem of the state of Andhra Pradesh.
M. SATYANARAYANA MURTHY, J

Date: 23-11-2018
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² 2006 (12) SCC 119

³ 2008 (14) SCC 364

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