

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4601 OF 2018

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.61 of 2018 in O.S.No.64 of 2012 dated 06.07.2018 passed by the Senior Civil Judge at Narayanpet, Mahaboobnagar District.

The petitioner is the plaintiff who lost his claim in a petition filed under Order VI Rule 17 C.P.C seeking leave to amend the plaint, alleging that, at the time of drafting the plaint, she handed over the entire document pertaining to the suit schedule property to her earlier counsel. But, due to oversight or other reason, her earlier counsel did not mention certain material averments in the main suit and recently he came to know about the defect in the pleadings. Therefore, the petitioner sought permission of the Court to give more details in the plaint by incorporating paragraphs 3(a) and 3(b) and requested to grant leave to amend the plaint.

Whereas, the respondents filed counter, denying material allegations, *inter alia*, contending that the petitioner filed petition after six years from the date of filing the suit and at the belated stage, amendment cannot be permitted and that there is no truth in the allegations made in the petition and prayed for dismissal of the petition.

The Trial Court upon hearing argument of both the counsel while dismissing I.A.No.61 of 2018 held that the petitioner's

counsel failed to exercise due diligence to bring the facts on records before commencement of trial. The present petition is filed challenging the order of the Trial Court on the ground that, the observations made by the Trial Court is not based on any material and moreover, it is a pre-trial amendment that can be allowed as a matter of routine, subject to the other conditions laid down by the Apex Court in various judgments. That too, the proposed amendment would not change the nature of the suit and requested to allow the petition, setting aside the order passed by the Trial Court in I.A.No.61 of 2018.

During hearing, Sri K.S. Murthy, learned counsel for the petitioner contended that, it is only a pre-trial amendment that would not change the nature or cause of action or it would not take away the right that is accrued to these respondents and therefore, the amendment can be allowed as a matter of routine, since it is a pre-trial amendment.

None appeared on behalf of the respondents. Notice ordered and sent to the respondents was returned with an endorsement that the respondents refused to accept the notice. Therefore, accepting the endorsement, I hold that the service is sufficient on the respondents.

As observed by the Trial Court, at page no.4 of the order, the application was filed before commencement of trial and when the application for amendment under Order VI Rule 17 C.P.C is filed; such pre-trial amendment can be allowed as a matter of routine, subject to the guidelines laid down by the Apex Court in various

judgments. The proposed amendment shall not change the nature of cause of action or nature of the suit and shall not take away the valuable right accrued to the respondents. In the present case, the relief claimed by the petitioner is not changing the nature of suit, but wanted to elucidate the facts by explaining certain circumstances. Such elucidation can be permitted as it would not change the nature of the suit and it would not take away the valuable right that is accrued to the respondents, if any, since the trial is not yet commenced.

According to Rule 17 Order VI of C.P.C., 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. However, the principles to decide petitions under Rule 17 Order VI of C.P.C. are well settled. Viz., the amendment shall not alter the basic structure or nature of the claim and that the amendment shall not take away the valuable right that accrued to the respondent or such amendment would not amount to withdrawing unequivocal admissions made in the pleadings.

In **Ragu Thilak D. John v. S. Rayappan**¹, the Supreme Court observed that, where the question as to whether an amendment to the pleading is barred by limitation or not, is a disputed question of fact, then in such cases, the issue of

¹ (2001) 2 SCC 472

limitation can be made an issue in the suit itself, and resultantly the amendment application can be disposed of as allowed.

In **L.C. Hanumanthappa (since dead) represented by his Legal Representatives v. H.B. Shivakumar**², the Apex Court held that, in amendment of plaint, when a suit is filed for relief of permanent injunction against the defendant/ respondent in appeal against the dismissal of the said suit, the Appellate Court remanded the suit to the Trial Court after allowing amendment in plaint regarding addition of further relief as to declaration of title to suit property. But, in the original written statement filed on 16.05.1990, the defendant therein clearly denied the plaintiff's possession to the suit property. Thus, in view thereof, held, right to sue for declaration of title first arose on 16.05.1990. The period of limitation of three years for filing suit for declaration of title, as provided under Article 58 of Limitation Act, 1963 continued from 16.05.1990 till 15.05.1993. Hence, the relief of declaration of title was barred by limitation and the Apex Court observed that, the delay cannot be made as a ground and though proposed amendment is hopelessly barred by limitation, the Court can permit such amendments.

There is a little controversy in the law declared by the Apex Court in various judgments, which cannot be set at naught at this stage by this Court.

² (2016) 1 Supreme Court Cases 332

In **Surender Kumar Sharma v. Makhan Singh**³, the Apex Court held that, when a petition is filed under Order VI Rule 17 C.P.C, amendment of plaint at belated stage is not liable to be rejected, merely on the ground of delay if Court finds that by allowing application real controversy between the parties may be resolved, then the Court can allow application where opposite party can be compensated by costs or otherwise, the Court has wide discretion to deal with the application in such manner and on such terms which appear it to be just and proper and with a view to do full and complete justice.

But, the rule permits to amend the plaint at any stage, which includes appellate stage, if the proposed amendment is necessary to decide the real controversy between the parties. Therefore, the law is clear that an amendment can be allowed at any stage prior to amendment of C.P.C by amending Act 22 of 2002 and after amendment of C.P.C, an interdict is created by virtue of proviso to Order VI Rule 17 C.P.C., but the same has no application in view of the law laid down by the Apex Court in various judgments referred supra.

Hence, I find that order in I.A.No.61 of 2018 in O.S.No.64 of 2012 dated 06.07.2018 passed by the Senior Civil Judge at Narayanpet, Mahaboobnagar District, is illegal and the same is liable to be set-aside.

In the result, civil revision petition is allowed, setting aside the order in I.A.No.61 of 2018 in O.S.No.64 of 2012 dated

³ (2009) 10 Supreme Court Cases 626

06.07.2018 passed by the Senior Civil Judge at Narayanpet, Mahaboobnagar District, permitting the petitioner to mend the pleadings.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:23.11.2018

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