

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4019 OF 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.792 of 2015 in O.S.No.128 of 2007 dated 12.07.2017 passed by the XII Additional Chief Judge, City Civil Court, Secunderabad, whereby, the petition filed under Order VI Rule 17 of Code of Civil Procedure (for short "C.P.C.") was allowed.

The petitioners herein are respondent nos. 4 & 5 and the first respondent herein is the petitioner in I.A.No.792 of 2015. For the sake of convenience, the parties hereinafter will be referred as arrayed in this civil revision petition.

The first respondent herein filed in I.A.No.792 of 2015 under Order VI Rule 17 CPC to permit him to amend the plaint to seek relief of declaration to declare the gift deeds executed in favour of defendant nos. 2 to 6 are not binding on the first respondent herein/petitioner and that they are null and void. It is alleged that petitioners herein, first respondent and respondents 2 to 5 are the brothers, sisters and children of one late B.Shankaraiah and the second respondent herein. B.Shankaraiah died intestate on 17.07.2006 leaving behind his wife and children to succeed the properties described in suit schedules 'A' to 'G'. Further, the first respondent herein filed

O.S.No.128 of 2007 for partition of the suit schedule properties 'A' to 'G'. During the lifetime of the mother of the first respondent, defendants 3 to 5 started hatching plans to knock away as much properties as possible at the cost of the other family members. In those circumstances, the first respondent herein was constrained to file O.S.No.128 of 2007 for partition and separate possession with respect to his 1/7th share in suit schedules 'A' to 'G' properties during the life time of his mother i.e. defendant no.1. Later, the first respondent's-mother died on 02.05.2010 and the first respondent herein became entitled to 1/6th share in the suit schedules 'A' to 'G' properties. Further, the first respondent herein filed I.A.No.493 of 2015 in O.S.No.128 of 2007 for amending the plaint to convert the plaintiff's share from 1/7th to 1/6th.

During the lifetime of the mother of the first respondent herein, the fourth defendant got executed various gift deeds involving most of the properties in his favour and to make believe that he is making a fair play got executed few gift deeds in favour of defendant nos.2,3,5 & 6 disproportionately when the first respondent's mother was mentally and physically unsound, to misappropriate much of the assets of the family and to deprive the plaintiff to claim his share. The defendants 2 to 6 got executed the following gift deeds:

S.no	Date & Doc No.	Parties	Description
1	16/10/2008 -- 1734/2008.	B.Sarojini.Devi -- Def No.4	For 10 no's of Mulgi(s)/Portion (s) in Schedule 'A' property for 2960.39 sq.ft
2	14/12/2007-- 2185/2007	B.Sarojini.Devi -- Def no.3	For 5 no's of Portion(s)/Mulgi(s) in Schedule 'A' property for 1776.89 sq.ft
3	14/12/2007-- 2184/2007	B.Sarojini.Devi -- Def No.5	For 5 no's of Portion(s)/Mulgi(s) in Schedule 'A' property for 1865.14 sq.ft
4	14/12/2007-- 2186/2007	B.Sarojini.Devi -- Daughter of Def No.5	For 1 no's of Portion(s)/Mulgi(s) in Schedule 'A' property for 256.00 sq.ft
5	14/12/2007-- 2181/2007	B.Sarojini.Devi -- Def No.4	For 5 no's of Portion(s)/Mulgi(s) in Schedule 'A' property for 1842.13 sq.ft
6	14/12/2007-- 2183/2007	B.Sarojini.Devi -- Elder daughter of Def No.4	For 1 no's of Portion(s)/Mulgi(s) in Schedule 'A' property for 328.00 sq.ft
7	14/12/2007-- 2182/2007	B.Sarojini.Devi -- Younger daughter of Def No.4	For 1 no's of Portion(s)/Mulgi(s) in Schedule 'A' property for 336.00 sq.ft
8	29/10/2007-- 2462/2007	B.Sarojini.Devi -- Def No.5	For Part of Schedule 'D' property (for approx-250 sq.yds)
9	12/11/2007-- 2545/2007	B.Sarojini.Devi -- Def No.5	Part of Schedule 'D' property rectification deed of 2462/2007
10	29/10/2007-- 2487/2007	B.Sarojini.Devi -- Def No.3	Part of Schedule 'D' property (for approx 150- sq.yds)
11	13/10/2008-- 5630/2008	B.Sarojini.Devi -- Def No.4	For Schd 'G' property (for approx 1039.00 sq.ft)

The execution of the above gift deeds during pendency of the partition suit, settling the property in the name of different persons without the knowledge of the plaintiff as well as the executant who was bedridden and was in unsound mind, they are not binding on

the first respondent and therefore, sought for declaration that the gift deeds are null and void.

To claim such relief, the first respondent herein/petitioner sought leave of the Court below to amend the plaint to claim relief of declaration that the gift deeds are null and void. The first petitioner herein/respondent no. 4 filed a detailed counter in I.A.No.792 of 2015, contending that the first respondent is not entitled to claim such relief at a belated stage and that his mother executed the gift deeds in a sound and dispossessing stage of mind in the name of her grand children, but not in favour of defendants 2 to 6, as alleged in the affidavit, while admitting execution of those gift deeds during pendency of the suit.

The first respondent did not deny the execution of gift deeds in favour of grand children of the first defendant with the knowledge of the first respondent/plaintiff. It is specifically contended that the first defendant-mother did not execute any gift deeds in favour of defendants 2 to 6 and she categorically disclosed in her written statement that, she had gifted the entire property under various gifts, settlements since it is her exclusive property. But, this fact is within the knowledge of the first respondent on 08.02.2008 when the mother of the revision petitioners filed her written statement in the said suit. But, after lapse of 6 ½ years, the first respondent filed the present petition seeking leave of the Court below to amend the plaint, enabling the petitioners to claim declaratory relief. Therefore, the first respondent is not entitled to

claims such relief by amending the plaint at belated stage without satisfying the Court, that, despite exercise of due diligence, the petitioner could not have raised such plea and prayed to dismiss the petition.

Upon hearing arguments of both the counsel, the Court below passed a cryptic order in two lines, the operative portion of the order reads as follows:

“Even the petition is considered no prejudice will be cause to the respondents and on the other hand the matter would be adjudicated properly.

As regard to the reasons stated in the petition is allowed. Accordingly, the petitioner is permitted to amend the plaint as prayed for. The petitioner is directed to carry out to amendment. The petitioner is also directed to pay the requisite court fee for the relief sought in this petition on or before 21-07-2017. No costs.”

Recording the above reason, the Court below allowed I.A.No.792 of 2015, permitting the first respondent herein/petitioner to amend the plaint, so as to claim declaratory relief. Aggrieved by the order passed by the Court below, the present civil revision petition is filed under Article 227 of the Constitution of India, raising several contentions.

The present revision is filed on various grounds mainly contending that the relief of declaration is barred by time and in fact, at the time when the defendant Nos.8 to 29 were impleaded, no steps were taken to seek amendment of the plaint, and the defendant No.1 in her written statement disclosed the factum of execution of gift deeds by her in favour of defendant Nos.2 to 6

long ago, but the petitioner/plaintiff did not take any steps to claim such relief and the relief claimed by the petitioner is hopelessly barred by limitation, in such case the amendment cannot be permitted. It is also further contended that when the trial is commenced, the amendment cannot be permitted in view of the bar under proviso to Order VI Rule 17 of C.P.C, but the trial Court did not consider the objections and did not verify the written statement filed by defendant No.1 disclosing execution of gift deeds in the year 2008 itself and the trial Court also failed to consider the basic requirement to exercise power under Order VI Rule 17 of C.P.c., which is purely discretionary and committed an error by passing cryptic order and prayed to set aside the impugned order passed by the Court below.

Sri P.Shiv Kumar, learned counsel for the petitioner, reiterated the contentions urged in the revision and drawn the attention of this Court to the written statement filed by defendant No.1 in the year 2008, which disclosed about the execution of gift deeds, but the petitioner before the trial Court did not raise such plea, thereby the respondent No.1/plaintiff failed to exercise due diligence as required under proviso to Order VI Rule 17 of C.P.C. and passed cryptic order, such cryptic order is unsustainable under law and prayed to set aside the same, whereas the learned counsel for the respondent No.1, petitioner before the trial Court, supported the order in all respects.

The order under challenge is running into two paragraphs virtually and did not disclose any reason for granting such permission to amend the plaint except extracting the contentions of the petitioner in one para and respondent in three lines though detailed counter was filed and allowed the petition on the ground that no prejudice will be caused to the respondents therein and the matter would be adjudicated properly. But this reason is not based on any pleadings of both the parties and prejudice alone is not a consideration for granting leave to amend the plaint incorporating the relief, which is allegedly barred by limitation, therefore, the cryptic order cannot be sustained under law.

The Presiding Officer of the Court is a senior officer in the cadre of District Judge, experienced in writing judgments and orders, but such cryptic order is not expected from an officer of cadre of District Judge.

Time and again, the Apex Court and this Court issued certain guidelines to be followed for drafting judgments/orders and highlighted the requirements of an order or judgment.

What an order shall contain normally is not specified anywhere but the order must be reasoned one since the judgment or order in its final shape usually contains in addition to formal parts:- (i) A preliminary or introductory part, showing the form of the application upon which it was made, the manner in which and the place at which, the writ or other originating process was served, the parties appearing any consent, waivers, undertakings

or admissions given or made, so placed as to indicate whether they relate to the whole judgment or order or only part of it, and a reference to the evidence upon which the judgment or order, is based and (ii) A substantive or mandatory part, containing the order made by the Court" as has been said in Halsbury's Laws of England (4th Edition, Volume 26 P. 260). Thus, in view of the requirements of an order or judgment referred above, an order pronounced on the bench shall contain the reasoning since the judge speaks with authority by his judgment. The strength of a judgment lies in its reasoning and it should therefore be convincing. Clarity of exposition is always essential. Dignity, convincingness and clarity are exacting requirements but they are subservient to what, after all, is the main object of a judgment, which is not only to do but to seem to do justice. In addition to these cardinal qualities of a good judgment, there are the attributes of style, elegance and happy phrasing which are its embellishments. In the words of Former Chief Justice of the Supreme Court Sabyasachi Mukharji, the requirement of a good judgment is reason. Judgment is of value on the strength of its reasons. The weight of a judgment, its binding character or its persuasive character depends on the presentation and articulation of reasons. Reason, therefore, is the soul and spirit of a good judgment. Equity, justice and good conscience are the hallmarks of judging. One who seeks to rely only on principles of law, and looks only for the decided cases to support the reasons to be given in a

case or acts with bias or emotions, loses rationality in deciding the cases. The blind or strict adherence to the principles of law sometimes carries away a judge and deviates from the objectivity of judging issues brought before him. Justice M.M. Corbett, Former Chief Justice of the Supreme Court of South Africa, recommended a basic structural form for judgment writing, which is as follows:

"(i) Introduction section;

(ii) Setting out of the facts;

(iii) The law and the issues;

(iv) Applying the law to the facts;

(v) Determining the relief; including costs; and

(vi) Finally, the order of the Court."

Keeping in view various principles and observations including the definition of order and judgment, the Apex Court laid down certain guidelines for writing judgments and orders in Joint Commissioner of Income Tax, Surat, v. Saheli Leasing and Industries Limited (Civil Appeal No. 4278 of 2010) in para No. 7 of the judgment and they are extracted hereunder:

"7. These guidelines are only illustrative in nature, not exhaustive and can further be elaborated looking to the need and requirement of a given case:-

(a) It should always be kept in mind that nothing should be written in the judgment/order, which may not be germane to the facts of the case; It should have a co-relation with the applicable law and facts. The ratio decidendi should be clearly spelt out from the judgment/order.

(b) After preparing the draft, it is necessary to go through the same to find out, if anything, essential to be mentioned, has escaped discussion."

(c) The ultimate finished judgment/order should have sustained chronology, regard being had to the concept that it has readable, continued interest and one does not feel like parting or leaving it in the midway. To elaborate, it should have flow and perfect sequence of events, which would continue to generate interest in the reader.

(d) Appropriate care should be taken not to load it with all legal knowledge on the subject as citation of too many judgments creates more confusion rather than clarity. The foremost requirement is that leading judgments should be mentioned and the evolution that has taken place ever since the same were pronounced and thereafter, latest judgment, in which all previous judgments have been considered, should be mentioned. While writing judgment, psychology of the reader has also to be borne in mind, for the perception on that score is imperative.

(e) Language should not be rhetoric and should not reflect a contrived effort on the part of the author.

(f) After arguments are concluded, an endeavour should be made to pronounce the judgment at the earliest and in any case not beyond a period of three months. Keeping it pending for long time, sends a wrong signal to the litigants and the society.

(g) It should be avoided to give instances, which are likely to cause public agitation or to a particular society. Nothing should be reflected in the same which may hurt the feelings or emotions of any individual or society."

Hence, a judgment or an order shall contain the above seven minimum requirements i.e., (a) to (g). In the present case, the judgment passed by the Appellate Authority is bereft of such requirements. Therefore, the order of the Court below is against the requirements. When judgment is pronounced without reasoning, it is not a judgment in the eye of law for the reason that the requirement of reasoning either by trial or Appellate Court is to convey the mind of the judge while deciding such an issue before the Court. Where the trial Court has considered the entire evidence

on record and discussed the same in detail, come to any conclusion and its findings are supported by reasons even though the point has not been framed by the Appellate Court, there is substantial compliance with the provisions of C.P.C. and the judgment is not in any manner vitiated by the absence of a point of determination. Where there is an honest endeavour on the part of the lower or Appellate Court to consider the controversy between the parties and there is proper appraisal of the respective cases and weighing and balancing of the evidence, facts and the other considerations appearing on both sides is clearly manifest by the perusal of the judgment of the lower Court, it would be a valid judgment even though it does not contain the points for determination. The object of the Rule in making it incumbent upon the Appellate Court to frame points for determination and to cite reasons for the decision is to focus attention of the Court on the rival contentions which arise for determination and also to provide litigant parties opportunity in understanding the ground upon which the decision is founded with a view to enabling them to know the basis of the decision and if so considered appropriate and so advised, to avail the remedy of appeal conferred by CP.C. From a bare reading of the principle laid down in the above judgment, the requirement of recording of reasons is only to show that the Court has focused concentration on rival contentions and to provide litigant parties an opportunity of understanding the ground upon which the decision is founded. Even if it is an order

under the provisions of the local or central Act, still these basic requirements cannot be ignored by Courts. In such case, a judge is required to apply his/her mind and give focused consideration to rival contentions raised by both parties but in this case the court below without independent consideration and appreciating evidence on record passed the impugned order. Such order or judgment without independent consideration is not legally sustainable since Courts do not act blindly or mechanically and pass orders or judgments. Courts ought to be cautious and only on being satisfied that there is no fact which needs to be proved despite being in admission, should proceed to pass judgments. Thus, in the absence of application of mind in arriving at such conclusion without considering the contentions independently is nothing but cryptic order. The need for recording of reasons is greater in a case where the order is passed at the original stage, a decision without reasons is like grass without root, the requirement to record reasons is one of the principles of natural justice as well and where a statute required recording of reasons in support of the order, it must be done by the authorities concerned as held by the Apex Court in S.M. Mukerji v. Union of India [1990 CrI.L.J.2148]. The increasing institution of cases in all Courts in India and the resultant burden upon the Courts has invited attention of all concerned in the justice administration system. Despite heavy quantum of cases in the Courts, in the view of Courts, it would neither be permissible nor possible to state as

principle of law that while exercising power of judicial review on administrative action and more particularly judgment of Courts in appeal before in High Court, providing of reasons can never be dispensed with. The doctrine of audi alteram partem has three basic essentials, firstly; a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard, secondly; the concerned authority should follow fair and transparent procedure and lastly; the authority concerned must apply its mind and dispose of the matters by reasoned order or speaking order. This has been uniformly applied by Courts in India and abroad (vide Assistant Commissioner, Commercial Tax v. M/s. Shukla (2010) 4 SCC 785). Here in this case, the order is only slipshod consideration of facts, sacrificing quality of judgment in the name of expediency. Even otherwise, it is the duty of the Court to state its reasons on each issue by due application of mind, clarity of reasoning and focused consideration; a slipshod consideration or cryptic order or decree without due reflection on issues raised in the matter may render such decree unsustainable and therefore hasty adjudication must be avoided and each and every matter that comes to the Court must be examined with seriousness it deserves as held by the Supreme Court in Board of Trustees of Martyr Memorial Trust and another v. Union of India and another [2012 (10) SCC 734]. From the principles laid down in the above judgments, the judgment or order of the Court is nothing

but a slipshod one without focused consideration on the issues raised by both parties. In such case, the same cannot be sustained.

This Court reiterated the same principles in “**Leela Enterprises, Rep. by its Proprietor K.Surender and another v. Smt.Kamar Sultana @ Kamer Hassan**¹”

According to the petitioners before this Court the gift deeds were executed long ago commencing from 2007 till the end of October 2008. In the written statement dated 08.02.2008 filed by defendant No.1, she disclosed about the execution of gift deeds sought to be cancelled or set aside or declared as null and void.

In the written statement dated 08.02.2008 filed by the defendant No.1, she disclosed about the execution of gift deed and settlement deed. When the gift deeds were executed in 2007-2008 and the said fact is in the knowledge of the plaintiff, the plaintiff ought to have claimed relief in the proposed amendment within three years from the date of execution as per Article 59 of Limitation Act in stead of filing petition to seek necessary relief, but the petitioner/plaintiff filed the petition before the trial Court after lapse of 7 years and such relief is hopelessly barred by limitation by the date of proposed amendment.

In “**Rameshkumar Aggarwal v. Rajamala Exports Private Limited and others**²”, the Apex Court relying on “**Revajeetu Builders and Developers v. Narayanaswamy &**

¹ 2017 (5) ALT 75

² AIR 2012 SC 1887

Sons and others³”, to decide the scope of proviso to Order VI Rule 17 C.P.C laid down certain guidelines for granting or denying relief under Order VI Rule 17 of CPC viz., as follows:

“On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.

- 1) Whether the amendment sought is imperative for proper and effective adjudication of the case?
 - 2) Whether the application for amendment is bona fide or mala fide?
 - 3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;
 - 4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;
 - (5) Whether the proposed amendment constitutionally or fundamentally nature and character of the case?
- And
- (6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

These are some of the important factors which may be kept in mind while dealing with application filed under Order VI Rule 17. These are only illustrative and not exhaustive.

It is clear that while deciding the application for amendment ordinarily the court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.

³ 2009(8) SCJ 401

24. The Apex Court further held that,

"amendment application to be filed if necessary immediately after filing suit i.e. before commencement of trial. If the petitioners are able to prove or explain as to how they failed to take steps before the trial commenced despite exercising due diligence, the Court can allow such amendment. The factum of exercising due diligence depends upon circumstances."

Similarly in "**G.S. Prakash v. Polasa Hanumanlu**⁴", learned single Judge of this Court laid down certain guidelines where an amendment has to be allowed and also instances where amendment has to be refused and it reads as follows:

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;
- (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

⁴ 2015 (2) ALT 594

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 subserves 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;"

From the principles laid down in the above judgments, it is clear that when the claim is **barred** by limitation, leave cannot be granted to amend the plaint. The Court below did not consider the contentions of the petitioners herein in proper perspective and committed an error in passing the cryptic order. Hence, the cryptic order under challenge in the revision is liable to be set aside by exercising power under Article 227 of Constitution of India since the Court below did not exercise its jurisdiction properly. Therefore, the impugned order is hereby set aside while remanding the matter to the trial Court for passing reasoned order afresh in

accordance with law considering all questions raised by the petitioners herein.

In the result, the civil revision petition is allowed, setting aside the order dated 12.07.2017 passed in I.A.No.792 of 2015 in O.S.No.128 of 2007 by the XII Additional Chief Judge, City Civil Court, Secunderabad while remanding the matter to the trial Court with a direction to consider the contentions of the petitioners herein and pass appropriate reasoned order afresh in accordance with law, within two (2) months from the date of receipt of a copy of this order. No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.

23.02.2018
SP/Ksp

JUSTICE M. SATYANARAYANA MURTHY

