

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.4676 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 18.07.2018, of the learned Principal Junior Civil Judge, Punganur, Chittoor District, passed in I.A.no.410 of 2018 in O.S.no.246 of 2009.

2. I have heard the submissions of *Ms. S Parineeta*, learned counsel appearing for the petitioners/plaintiffs ('plaintiffs', for brevity); and, of *Sri G.Venkateswara Rao*, learned counsel appearing for the respondents/defendants ('defendants', for brevity). I have perused the material record.

3. The introductory facts, in brief, are as follows:

The plaintiffs filed the suit against the defendants seeking perpetual injunction. When the suit is at the stage of arguments, the plaintiffs filed the subject interlocutory application seeking certain amendments to the plaint schedule. The said application was resisted by the defendants. On merits and by the order impugned, the trial Court dismissed the application of the plaintiffs and refused to accord permission to amend the plaint schedule. Hence, the plaintiffs are before this Court.

4. The case of the plaintiffs in support of their request for amendment of the schedule of the plaint, in brief, is as follows:

The plaintiffs together filed the suit for perpetual injunction in respect of items 1 to 3 of the plaint schedule properties, which are within the common boundaries mentioned in the schedule of the plaint. The 1st plaintiff is claiming item no.1; the 2nd plaintiff is claiming item no.2; and, the 3rd plaintiff is claiming item no.3 of the plaint schedule properties. The 1st plaintiff died. His legal representatives have not come forward for their impleadment and therefore, the suit insofar as the 1st plaintiff stood abated insofar as first item of the plaint schedule properties, which he originally claimed. Therefore, the

suit claim insofar as plaintiffs 2 & 3 remained and it is being prosecuted by the said plaintiffs 2 & 3 in respect of their respective item nos. 2 & 3 of the plaint schedule properties. At the time of granting of patta for item no.3 of the plaint schedule properties in the name of the third plaintiff, the survey number is mentioned as '242/ 3' and the extent as 'Ac.5.35 cents paiki Ac.1.61 cents'. Later, during the maintenance of the revenue records, the survey number is mentioned as '242/ 3D'. In the said circumstances, the plaintiffs 2 & 3 are advised to seek amendment of the plaint as mentioned in the petition list.

4.1 The proposed amendment verbatim reads as follows:

- “1. Add the following letter “D” in plaint schedule in item no.3 of the suit schedule property after S.No.242/ 3 as S.No.242/ 3D.
2. Delete letter “1” in items column of the plaint schedule and add “2” in the place of “1”.
3. Delete “banda and Ramakkagari Ramachandra Reddy’s land” in southern boundary add “item No.1 of the suit schedule belongs to Mallu Gevappa” as southern boundary.”

5. The case of the defendants is this: ‘The plaintiffs 2 & 3 filed the subject application for amendment of the plaint schedule, that is, for amendment of description of survey number of item no.3 of the plaint schedule properties and correction of one of the common boundaries of the plaint schedule and deletion of item no.1 of the plaint schedule properties from the schedule. The said application is filed after closure of evidence of both the sides. The proposed amendment, if permitted, changes the pleadings in entirety and will affect the case of the defendants. If the amendment being sought for by the plaintiffs 2 & 3 stands allowed, it causes great prejudice to the defendants. The plaintiffs are amending the schedule of the plaint to fill up the lacunae. Therefore, the present application for amendment of the plaint schedule cannot be entertained. Hence, the said petition is liable to be dismissed.’

6. Learned counsel for both the sides advanced arguments in line with the pleadings.

7. From the facts pleaded, the content of the material record and the submissions made, the following facts are discernable: 'The three plaintiffs brought the suit for perpetual injunction in respect of their respective three items, viz., items 1, 2 & 3 of the plaint schedule property by showing all the three items within common boundaries. During the pendency of the suit, the 1st plaintiff died and his legal representatives did not show interest to come on record; therefore, the suit insofar as the 1st plaintiff stood abated. Therefore, the plaintiffs 2 & 3 are prosecuting the suit insofar as their two items of property, namely, items 2 & 3 of the plaint schedule properties. Therefore, they now want to delete item no.1 from the plaint schedule, which is the property of the 1st plaintiff, who died, and whose suit insofar as that item of property stood abated. Since common boundaries for all the three items were furnished in the plaint schedule, now, in view of the above said events, the plaintiffs 2 & 3 also seek amendment of one of the boundaries of the plaint schedule to exclude item no.1 of the plaint schedule properties from within the common boundaries and confine the boundaries of the plaint schedule to items 2 & 3, which are of plaintiffs 2 & 3. The other amendment, which the plaintiffs 2 & 3 are seeking, is in respect of description of the survey number of item no.3 of the plaint schedule, which belongs to the 3rd plaintiff. According to them, in the patta that was originally granted to the 3rd plaintiff, the survey number was mentioned as 242/3; however, while maintaining the revenue records, the survey number was mentioned as '242/3D'; and, therefore, it has become necessary to seek amendment of the survey number mentioned in the said item of the plaint schedule. These are the only three amendments, which the plaintiffs are seeking. The main contention of the defendants is that the suit is at the stage of arguments and that the amendment of the schedule, if permitted, changes the plaint pleadings. In the considered view of this Court, the very facts, which are narrated supra, are sufficient to come to a safe conclusion that this is a fit case to allow the amendment of the plaint

schedule. That apart, additionally this Court finds that the amendment sought for can be permitted for the following among other reasons.

8. The law is well settled that the amendment of the plaint schedule does not amount to change of pleadings or the cause of action. Be it noted that the amendment insofar as deletion of item no.1 of the plaint schedule and the change of one of the common boundaries of the plaint schedule items 1 to 3 to exclude item no.1 of the plaint schedule and to confine plaint schedule to items 2 & 3 is necessitated in view of the death of the 1st plaintiff who is the owner of the item 1 of the plaint schedule and the abatement caused on account of the fact that his legal representatives have not shown any interest to come forward for their impleadment and prosecuting the suit insofar as item no.1 of the plaint schedule properties. Further, the other amendment of the survey number of item no.3 from '242/3' to '242/3D' is also with regard to a 'formal defect' of the survey number of the said item and the said amendment is necessitated in view of the mention of the survey number as '242/3D' in the revenue records that were being maintained though in the patta the survey number was mentioned as 242/3. If the above said amendments are not permitted, the defects in the plaint schedule go to the very core of the subject matter of the suit and the entire suit proceedings would become fruitless in the event the plaintiffs 2 & 3 are not able to get the decree executed successfully on account of the defects in the plaint schedule. Further, the confusion regarding identification of the property would prevail in the event the 'formal defects' are not permitted to be corrected by allowing the amendment of the plaint schedule. The request of the plaintiffs 2 & 3 is only to correct the plaint schedule for proper identification of their respective items 2 & 3 of the plaint schedule at a future point of time, that is, for enjoying the fruits of the decree that may be granted by the trial Court, in the event their suit stands decreed. Unless item no.1 of the plaint schedule in regard to which the suit of the 1st plaintiff stood abated is excluded from common boundaries by permitting the amendment of one of the boundaries of the schedule of the plaint, confusion regarding identification of items 2 & 3 of the plaint schedule would prevail and

the same would lead to complexities in future. As rightly urged refusal to permit the amendment of the schedule of the plaint would create needless complications at the stage of the execution, in the event of the plaintiffs 2 and 3 succeeding in the suit. Therefore, in the facts & circumstances of the case, this Court considers that amendment of the schedule of the plaint as being sought for by the plaintiffs 2 & 3 deserves to be permitted as allowing the amendments as sought for would help the parties in avoiding confusion regarding identification of items 2 & 3 of the plaint schedule properties being claimed by the plaintiffs 2 and 3.

9. Dealing with the legal position it is to be noted that in *Usha Devi v. Rijwan Ahamd*¹, a contention was advanced that the trial of the suit would commence with the settlement of the issues; and, in support of the said contention that the framing of issues marked the commencement of the trial of the suit reliance was placed on the decision in *Ajendraprasadji N.Pandey v. Swami Keshavprakeshdasji* [(2006) 12 SCC1]. However, while meeting the said contention, the attention of the Supreme Court was invited to the decision of the Supreme Court in *Baldev Singh v. Manohar Singh* [(2006)6 SCC 498] wherein it was held as follows:

“Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial Court. That apart, commencement of trial as used in proviso to Order VI Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order VI Rule 17 CPC which confers wide power and unfettered discretion on

¹ (2008) 3 Supreme Court Cases 717

the Court to allow an amendment of the written statement at any stage of the proceedings.

Further, the Supreme Court having referred to a three-judge Bench decision in *Sajjan Kumar v. Ram Kishan*², had held as follows:

“Having heard the learned Counsel for the parties, we are satisfied that the appeal deserves to be allowed as the trial Court, while rejecting the prayer for amendment has failed to exercise the jurisdiction vested in it by law and by the failure to so exercise it, has occasioned a possible failure of justice. Such an error committed by the trial Court was liable to be corrected by the High Court in exercise of its supervisory jurisdiction, even if Section 115 CPC would not have been strictly applicable. It is true that the Plaintiff-Appellant ought to have been diligent in promptly seeking the amendment in the plaint at an early stage of the suit, more so when the error on the part of the plaintiff was pointed out by the defendant in the written statement itself. Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of the execution in the event of the plaintiff-appellant succeeding in the suit.”

Thus in *Usha Devi's* case (Supra), the Supreme Court, keeping in view of the decision in *Sajjan Kumar* (supra), held as follows:

“We may clarify here that in this order we do not venture to make any pronouncement on the larger issue as to the stage that would mark the commencement of trial of a suit but we simply find that the appeal in hand is closer on facts to the decision in *Sajjan Kumar* and following that decision the prayer for amendment in the present appeal should also be allowed.”

Further, in the decision in *Abdul Rehman and Another v. Mohd. Ruldu and Others*³, the Supreme Court, reiterated the following proposition:

“All amendments which are necessary for the purpose of determining real questions of controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.”

² (2005) 13 SCC 89

³ 2013(1)ALD 1(SC)

In Pankaja and another v. Yellapa⁴, the Supreme Court held as follows:
follows:

“If the granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed.”

Since the dominant purpose of the Rule is to minimize the litigation and to enable the parties to have all the issues relating to one dispute resolved in one suit, the amendment sought for by the plaintiffs 2 and 3 can be allowed, in the considered view of this Court. As rightly pointed out, the question whether the plaintiffs 2 and 3 would be entitled to succeed cannot be prejudged while considering the instant application, filed for amendment of the schedule of the plaint. Further, if granting of amendment really sub-serves the ultimate cause of justice and avoids further litigation, the same should be allowed and the Court has also to consider whether the proposed amendment is intended to determine the real dispute between the parties. No right accrued to the defendants would get defeated if the proposed amendment is allowed. Further, in view of the facts and the ratios in the decisions, which are squarely applicable to the facts of the case, this Court is of the considered view that the order refusing the amendment of plaint schedule is not justified and that therefore, the order of the Court below dismissing the petition seeking amendment of the plaint schedule brooks interference.

10. On the above analysis, this Court finds that the order impugned of the trial Court is unsustainable under facts and in law and is liable to be set aside.

11. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. As a sequel, IA.No.410 of 2018 in OS.No.246 of 2009 on the file of Principal Junior Civil Court, Punganur, is allowed. The Court below shall now permit the plaintiffs 2 and 3 to carry out the amendment of the plaint schedule, as prayed for, and file a neat copy of the plaint with amended schedule. On filing of such neat copy of the plaint and schedule, the Court

⁴ AIR 2004 SC 4102

below shall give the defendants an opportunity to file additional written statement to answer the averments in the amended plaint.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M. SEETHARAMA MURTI, J

24.12.2018

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