

HONOURABLE SRI JUSTICE N. BALAYOGI**CIVIL REVISION PETITION No.302 of 2016****ORDER:**

This Civil Revision Petition, under Article 227 of the Constitution of India, preferred against the orders dated:07-12-2015 in I.A.No.974 of 2015 in O.S.No.71 of 2013 on the file of the XV Additional District Judge, Nuzivid, in allowing the amendment.

2. The contention of revision petitioners / defendants 4 to 6 is that no amendment can be allowed after commencement of trial, in this case, plaintiffs commenced their evidence long back. It is the further contention that respondents/plaintiffs have suppressed various facts while filing the Suit on the file of the Trial Court; that amendment will not change the nature of the Suit.

3. On the other hand, the respondents / plaintiffs contended that the sale of property is not for the necessities of the joint family, therefore, necessitated amendment of the pleadings.

4. Now, the point that arises for determination is:

Whether the order of the Trial Court suffers from any legal infirmity warranting interference in the Revision Petition?

5. The undisputed facts are that the respondents 1 and 2 are the plaintiffs who filed the Suit for partition of share of defendant No.1

who is the husband of Dara Naga Malleswari and father of plaintiffs who being minors, represented by their mother and natural guardian, for partition and allotment of 1/3rd share in plaint schedule property.

6. In the plaint, it is specifically pleaded that the defendant No.1 dismantled and dilapidated old tiled house in item No.2 of the plaint schedule property and when guardian and natural mother of the plaintiffs raised the same question in respect of the shares of the plaintiffs in item No.2 of the plaint schedule property, at that point of time, defendants 1 and 2 advised plaintiffs that the old tiled house was removed for the purpose of construction of a shopping complex and a residential building with cellar, ground and first floor in item No.2 of the plaint schedule property and defendant No.1 promised to partition his share of 4/9th into three equal shares and to allot two shares to the plaintiffs after construction of building in item No.2 of the plaint schedule property.

7. Contrary to the above promise, the defendants executed a registered sale deed dated:15-11-2008 in respect of open terrace area of 1500 square feet on the first floor in item No.2 of the plaint schedule property and further contended that the sale deed dated:15.11.2008 in favour of defendants 4 to 6 by defendants 1 and 2 is not legal, valid and not binding on the plaintiffs in respect of their shares in the plaint schedule property.

8. In the counter filed by respondent No.4/defendant No.4 in I.A.No.974 of 2015 in O.S.No.71 of 2013, there is a specific plea that the petitioners / plaintiffs have no birth right in the plaint schedule property. The plaintiffs filed Suit by colluding with defendants 1 and 2 with an illegal object to worry and harass the defendants 4 to 6 in the Suit. The defendants 4 to 6 are in peaceful possession and enjoyment of their purchased property as a bonafide purchaser and they are paying property tax and other taxes separately to their property. The sale consideration utilized for the benefit and development of item No.2 of plaint schedule property and consequently defendants 1 and 2 getting rents and defendant No.1 is doing his business in the plaint schedule property and the sale of defendants 4 to 6 purchased property is benefit to item No.2 of the plaint schedule property.

9. In fact, according to the arguments advanced by the petitioners while evidence affidavit of PW.1 filed on 30.7.2015 and the amendment petition in I.A.No.974/2015 was filed on 14.10.2015, it is an admitted fact that the evidence affidavit of PW.1 is not confronted but it was simply filed in the Court and the trial has not yet commenced.

Order-VI, Rule-17 of Code of Civil Procedure reads as under:

“17. **Amendment of Pleadings.**-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.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

10. A reading of the impugned order go to suggest that the Trial Court while considering the counter filed by defendant No.4 which is adopted by the respondents 5 and 6, found that the plaintiffs/petitioners want to make amendment, touching pleadings that there is no necessity to sell part of schedule property which was not in the interest of plaintiffs.

11. In the counter, the respondents as already discussed above contended that the petitioners / plaintiffs have no birth right in the schedule property and the sale consideration was utilized by respondent No.4 and by allowing such amendment, nature of Suit will be changed. Since the Suit is for partition and in the plaint itself petitioners pleaded that defendants 1 and 2 sold the property on 15.11.2008 which is illegal, void and not binding on the share of the petitioners / plaintiffs. The only thing which they want to amend is that sale of 1500 square feet open terrace area on the first floor of item No.2 of plaint schedule property to the defendants 4 to 6 is not for the benefit of minors and such plea, neither the cause of action nor nature of the Suit will change. For proper adjudication, the facts in issue in the main Suit, such amendment is necessary and the Trial Court by allowing such amendment and after carrying out consequential amendment in the Plaint, the respondents have an

opportunity to file additional counter / rejoinder and necessary issues will be settled for trial. Mere filing of evidence affidavit without confronting does not mean commencement of trial. Even if trial commence, under Order-VI, Rule-17 of the Code of Civil Procedure, the Court has ample power to allow the amendment, if it feel necessary, in the interest of justice and for proper adjudication, such amendment can be allowed.

12. In the facts and circumstances discussed above, I am of the considered view that there is no illegality or error in the order of the Trial Court and it is legal, valid and do not suffer from any legal infirmity warranting interference.

13. In the result, the Civil Revision Petition is dismissed while confirming the orders dated:07-12-2015 in I.A.No.974 of 2015 in O.S.No.71 of 2013 on the file of the XV Additional District Judge, Nuzivid.

JUSTICE N. BALAYOGI

Dated:25-4-2018

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HONOURABLE SRI JUSTICE N. BALAYOGI



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DATED:25-04-2018

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