THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 4917 OF 2018

O R D E R:

This Revision is directed against the order dated 30.07.2017 passed by the learned II Additional District Judge, Hindupur in I.A.No. 296 of 2018 in O.S.No. 19 of 2007.

The petitioners are the plaintiffs, who filed the above-said suit seeking declaration of their right, title in respect of the plaint schedule property and for grant of consequential injunction in their favour restraining the defendants, their men and representatives from interfering with the subject properties. The suit schedule property is as follows:

SCHEDULE

Property situated at Gudipalli Polam within the SRD of Penukonda and RD of Anantapur.

Sl.No.	Babu	Old S.No.	New S.No.	Extent (Ac)	Market Value (per Ac)	
01	G Dry	86D	65	506-20	FULL	Rs.24,000/- =12148800/-
02	G Dry	86D	67	201-26	FULL	Rs.24,000/- =4830240/-
03	G Dry	86A	83	510-04	FULL	Rs.30,500/- =15556220/-
04	G Dry	79 & 81	99	348-17	FULL	Rs.21,500/- =7485655/-

Along with the shrubs, structures, buildings, sheds, store rooms, office room valued Rs. 1998000/- and other equipments and machinery valued Rs.5,00,000/-.

Property situated at Somandepalli polam within the SRD of Penukonda and RD of Anantapur.

Sl.No.	Babu	Old S.No.	New S.No.	Extent (Ac)	Market value(per Ac)	
05	G Dry	--	733-2	210-12	FULL	Rs.24,000/- =5042880/-

Total market value of the property is Rs.4,75,61,795/-.

The case of the petitioners is that the suit property was purchased by one Sri Jethalal Haridas Joisher through the registered sale deed dated 20.09.1949. The said Haridas Joisher is the father of petitioners 1 and 2, grandfather of petitioners 4 and 5 and father-in-law of the 3rd petitioner. He did business in the name and style of *'Jethalal and Company'* at the first instance and thereafter, the name of the firm was changed to *'Banushali Sisal Fiber Industry and Plantation'* which was formed as a division of original firm. As the respondents / defendants were claiming right over the subject property and were interfering with the peaceful possession and enjoyment of the petitioners over the said property, the petitioners had filed O.S. No. 7 of 1996 seeking injunction. The said suit came to be dismissed, so also the appeal i.e. A.S. No. 1 of 2003 on the file of the Additional District Judge's Court at Hindupur. While dismissing S.A.No. 822 of 2006 preferred by the petitioners, this Court *vide* judgement dated 20.11.2016, gave them the liberty to file a suit for recovery of possession of the suit property from the respondents, if they are so advised, pursuant to which, the present suit, O.S. No. 19 of 2007 was filed for the relief, as stated supra.

In the suit, P.Ws.1 to 6 were examined and Exs.A1 to A38 were marked. Exs.X1 to X51 were also marked. The plaintiffs' side evidence was closed. The respondents – defendants filed the affidavit in lieu of chief-examination of the 1st defendant as D.W.1 along with the documents and photographs. At that stage, the present I.A.No. 296 of 2018 was taken out by the petitioners under Order 6 Rule 17 of the Code of Civil Procedure (for short, 'the CPC'), to amend the plaint by incorporating para 24(A) as stated in the Schedule to the Petition, which reads as follows:

> " 24(A) The plaintiff submits that the alleged document of family settlement dated 27.02.1991 is a totally fraudulent, created, manipulated, fabricated, got up document and the notary who

notarised never existed, further the minutes of 14.04.1991 creating a partnership deed alleged to have permitted the defendant to run the partnership in regard to the idle dilapidated factory is fraudulently brought into existence by the defendant knowing fully well that such a situation stated in the minutes never arose. As both the documents relied by the defendant claiming rights over the land and factory are fraudulent, fabricated, got up record without any evidentiary value, the claim of the defendant over the schedule properties has to be disbelieved and action appropriate for playing fraud on the court and creating false evidence need be taken."

For better appreciation of the case of the petitioners, paragraphs 3 and 4 of the affidavit filed in support of the I.A. are extracted verbatim:

" I submit that the copies furnished to us were verified extensively to arrive at the truth. My enquiry revealed that the document dated 29.02.1991 a notarised affidavit to prove the alleged family settlement and minutes of the partnership dated 14.04.1991 to show that partnership of sisal fibre unit. The said documents are fraudulent got up, fabricated. There was no such notary who attested the affidavit dated 27.02.1991 at all. It was fabricated, fraudulent to lay a claim on the suit properties and factory unit. Fraud played at any stage robs of the validity of evidence and the respondent – defendant pleas can be disbelieved and just decisions could be arrived. The fraudulent practice of producing false fabricated affidavit and minutes at later stage of the suit especially after closing my evidence did not permit me to take up pleas of the fraud played affecting the effective trial. The pleas of fraud has to be raised to nullify the adduction of fraudulent pieces of evidence. Hence, it became necessary for me to amend the plaint and taking up a plea that the respondent has played fraud on Court which has a telling effect and also us on the course of trial. The plea necessitated to prevent unhealthy practice of production of fraudulent documents to make a false claim by misleading the Hon'ble Court affecting the dignity and decorum of the Court. I therefore, sought to amend the plaint by incorporating para on the plea of fraud. The same need be allowed permitting me to amend the plaint by incorporation of para 24(A) as described in the schedule.

4. I submit in spite of due diligence I could not come out with the plea as the production document took place after closure of my evidence. They were not listed in the written statement filed by the respondent. Hence, this Application."

A detailed counter-affidavit was filed in the I.A. running into five pages. It is not necessary for this Court to extract, in detail, the averments therein, as they mainly relate to various aspects of the suit touching upon the merits of the matter. For the purpose of disposal of this Revision, suffice if the main plea on behalf of the respondents is considered, which is as follows:

It is stated in the counter that Premji Velji representing his branch, Vasanthlal Haridas Joisher representing the branch of Haridas Velji and respondent No.1 representing the branch of Chhaganlal Velji met on 27.02.1991 and resolved that the firm '*Bhanushali Sisal Fibre Industry and Plantation, Petakunta*' with all the lands attached to it should be transferred to the sons of Chhaganlal Velji with condition that the partners of the firm should be absolved of all the liabilities and also be divorced of rights in that firm. The resolution was signed by all the three persons representing the three branches and the same was attested by an advocate - cum - notary Public Sri A.M. Chabria on 27.02.1991. Sri Prakash Jethalal Joisher, Sri Jethalal Haridas Joisher and Sri Vikran Jethalal Joisher (petitioner No.1) submitted resignations to their partnership in the firm by means of letters and retired from the firm. Thus the family settlement was arrived at and the same was reduced into writing on 27.02.1991. The three representatives have met again on 14.04.1991 and affirmed the resolution dated 27.02.1991. The resolution dated 27.02.1991 and the letters of resignation are true and genuine. The attestation is also true and a real one. The allegations of the petitioners regarding the attestation are absolutely false. It is further averred that Sri Jethalal Haridas Joisher, father of petitioner No.1 filed

O.S.No. 7 of 1996 against respondent No.1 and others which came to be dismissed. In the written statement of the 1st respondent (defendant No.1 in O.S. No. 7 of 1996), family settlement dated 27.02.1991, letters of resignations dated 27.02.1991, affirmation deed dated 14.04.1991 and also formation of new firm dated 09.08.1991 were pleaded clearly in plain language. During the cross-examination of P.Ws.1 and 2, the said documents were also confronted. The judgment in O.S.No. 7 of 1996 had become final, on account of dismissal of First Appeal and Second Appeal preferred thereagainst. As a matter of fact, the interrogatories were also served with respect to family settlement dated 27.02.1991. P.W.1 was confronted with minutes dated 27.02.1991, formation of new firm dated 09.08.1991 and other aspects relating to the family settlement. It is further asserted that CRP No.7312 of 2017 is pending before this Court with respect to the orders in I.A. No. 806 of 2017, wherein the respondents were allowed to place certain documents on record. The petitioners have filed the present Application at a belated stage and it is not maintainable. Further, it is asserted that the Application has been filed to prolong the proceedings in the suit and to prevent the 1st respondent from deposing before the Court knowing fully well that he is a septuagenarian and his memory is likely to fade.

After considering the rival pleadings and the law placed on record by both the learned counsel, the learned II Additional District Judge had dismissed the Application *vide* order under Revision, on the ground that the same was taken out only to drag on the proceedings of the suit.

Sri C. Hanumantha Rao, learned counsel for the petitioners, while reiterating the various facts and taking this Court copiously through the respective pleadings, submits that 1) the respondents have played fraud in bringing up the document attested by a notary, who is non-existent; and 2) as the document itself is a fraudulent one, as the fraud vitiates anything and everything, the petitioners shall be allowed to plead the said aspect of fraud, which was omitted in the rejoinder inadvertently. Making a reference to the contents of the document, the learned counsel asserts that the amendment sought could not have the effect of transferring the rights in immovable properties much less any land. According to him, a reading of contents of the document leaves no manner of doubt that the same is a fabricated one. The objection raised by the respondents / defendants to the amendment is not tenable, as O.S.No. 7 of 1996 was only an injunction suit and in fact, there was no discussion as to the said document which was produced in evidence for the purpose of confronting P.W.1 and at any rate, dismissal of the injunction suit simplicitor does not bar the relief to be granted in the present suit for declaration where valuable rights of the parties are involved, contends the learned counsel. He would further contend that as a matter of fact, this Court in its judgment rendered in Second Appeal No. 822 of 2006, dated 20.11.2006, granted liberty to the petitioners to file a suit for recovery of possession of the suit property, if they are so advised. The learned counsel places reliance on the judgments of the Supreme Court in ***S.P. Chengalvaraya Naidu v. Jagannath*[1]*,***

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[1] (1994) 1 SCC 1

Ramchandra Singh v. Savitri Devi[2] and ***A.V. Papayya Sastry v. Govt. of A.P.***[3] to support his contention that fraud vitiates everything and anything and it strikes at the root of the matter. He also places reliance on the judgment of the Supreme Court in ***Rameshkumar Agarwal v. Rajmala Exports Private Limited***[4] (paras 13, 21 to 23), ***Chakreshwari Construction Private Limited v. Manohar Lal***[5] and the judgment of this Court in ***P. Durga Reddy v. B. Yadi Reddy***[6] to support his argument that an Application made in terms of Order 6 Rule 17 CPC seeking amendment of pleadings can be considered at any stage and the Courts should be liberal in granting such amendments. The learned counsel emphatically asserts that in the present case, the petitioners satisfy the parameters laid down by the Supreme Court in considering the Applications under Order 6 Rule 17 of the Code.

Sri O. Manohar Reddy, learned counsel appearing for the respondents contends that the Application made by the petitioners is a belated one and it does not satisfy the crucial test laid down by the Supreme Court in considering the Applications under Order 6 Rule 17 CPC. Labouring on the same, *Mr. Reddy* submits that after amendment to Order 6 Rule 17 CPC, by adding a proviso, by Act 22 of 2002 with effect from 01.07.2002, amendment to the pleadings shall not be allowed after commencement of trial unless the Court is satisfied that in spite of 'due diligence', the party could not have raised the plea before commencement of trial. He further asserts that the written statement was filed on 30.01.2008 and the petitioners had referred to the family settlement and the

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[2] (2003) 8 SCC 319
[3] (2007) 4 SCC 221
[4] (2012) 5 SCC 337
[5] (2017) 5 SCC 212
[6] (2015) 4 ALD 420

consequential changes made in extenso and as a matter of fact, the document dated 27.02.1991 in issue was marked as Ex.B2 in O.S.No. 7 of 1996. In other words, the petitioners though had the knowledge about the said document, for the first time, plea of fraud is being introduced in the present Application and at any rate, there is no explanation forthcoming from the petitioners / plaintiffs therefor. Relying on the judgment of the Supreme Court in ***Chakreshwari Construction Private Limited*** (5 supra) which was, in fact, cited by the learned counsel for the petitioners, by drawing the specific attention of this Court to para 13, the learned counsel submits that the amendment would be barred by limitation as the plaintiffs could not have sued the respondents on the basis of alleged fraud in bringing the subject document at this point of time, as, the limitation for filing a suit is three years from the date of knowledge of such document. Admittedly, the learned counsel would assert that, the petitioners were aware of the existence of the document which was marked as Ex.B2 in O.S.No. 7 of 1996 and hence, allowing the amendment, at this stage, would cause prejudice to the respondents. He would further contend that based on the documents available on record, an extensive cross-examination was done in the suit. He places reliance on the judgment of the Supreme Court in ***Md. Noorul Hoda v. Bibi Raifunnisa***[7] to support his contention that with respect to the suit based on fraud, the same would have to be initiated within three years from the date of discovery of fraud in view of Article 59 of the Schedule to the Limitation Act.

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[7] (1996) 7 SCC 767

Having considered the respective submissions, at the outset, it may be noted that it is not necessary for this Court to deal, in detail, various factual aspects of the matter, as, admittedly, the suit is still pending. Any observation that may be made, even casually, is likely to affect the rights of the parties in the pending suit. For the limited purpose of disposal of the Revision, what all required to be considered is the language of Order 6 Rule 17 which is extracted herein below:

> " **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:
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> Provided that no application for amendment shall be allowed after the trail 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."

Fortunately, Order 6 Rule 17 is subject matter of various judgments of the Supreme Court. While the judgments of the Supreme Court prior to amendment to the Code of Civil Procedure, by Act 22 of 2002 with effect from 01.07.2002, as noted in the judgment of this Court in ***P. Durga Reddy's case*** (cited 6 supra), are to the effect that amendment of pleadings can be allowed at any stage, provided it does not affect or prejudice the rights of the opposite party, much less changes the cause of action, liberal approach was curtailed by taking away the right once trial commenced. After amendment to Order 6 Rule 17, particularly by introduction of the proviso, discretion has been vested with the Court for allowing the amendments, but however, the Court has to be satisfied that in spite of 'due diligence' on the part of the party seeking amendment, the plea could not have been raised before commencement of trial. It may also be noted that though the relief was granted in the said judgment, a close scrutiny of the same discloses that the Application seeking amendment was filed at the earliest point of time i.e. within one year or before commencement of trial. The observations made were only of general in nature and relate to the facts of that particular case. Those principles cannot be applied to this case, as the facts are contra.

The judgment of the Supreme Court in ***Chakreshwari Construction Private Limited's* case** (5 supra) cited by the petitioners, on which reliance has been placed by the learned counsel for the respondents, clearly sets out that in an Application, which is made to be considered by the Court, the Court should come to a conclusion that the same has been made *bona fidely* and honestly. Amendments cannot be claimed as a matter of right. At the same time, the Court shall not scrutinize the same on a hyper-technical approach. Yet another principle set out by the Supreme Court in the said judgment is that the Court should, as a general rule, decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of Application.

In the present case, the affidavit of the petitioners in support of I.A. has been extracted to avoid any omission in summarising the specific plea taken by them. There is no reason as such stated by the petitioners as to why the amendment of the nature, which they sought at present, could not have been raised at the earlier point of time. It is not the case of the petitioners that they came to know of this document for the first time, as it was, in fact, marked as Ex.B2 in O.S. No. 7 of 1996. Whether there is discussion with respect to the said document in earlier proceedings or not is not relevant in the present suit. Even assuming for argument sake, the plea with regard to fabrication or alleged fraud ought to have been taken at the earliest point of time and there is no reason for filing the Application at a belated stage. It may be noted that the language of Order 6 proviso is that the Court has to come to conclusion that in spite of 'due diligence', the party could not have raised the matter before commencement of trial. In the present case, neither the petitioners had pleaded any insurmountable difficulty in raising such plea nor could establish that there is any effort having been made at the earliest point of time to take the plea of the nature, hence, this Court has no hesitation to find that there was no such insurmountable difficulty or hindrance on behalf of the petitioners to have raised this question at the earliest point. In that view of the matter, the Application does not seem to have been made in a good faith or *bona fidely.* Mere repetition of the word *'fraud'* does not, by itself, make a transaction fraud. As a matter of fact, such plea could have been raised in earlier proceedings. Not having done so, the same cannot be pressed for the purpose of seeking amendment that too at a stage where, admittedly, the trial has commenced in 2017 and five witnesses were examined on behalf of the plaintiffs and the matter is at the stage of cross-examination of defendant No.1. The aspect of prejudice, as canvassed by the respondents, also cannot be ruled out. So far as the plea of limitation, which has been raised by the learned counsel for the respondents is concerned, this Court does not wish to make any observation, as it has already come to the conclusion that the Application made by the petitioners lacks *bona fides* and it does not satisfy the criteria laid down in Order 6

Rule 17 Proviso and further an issue has already been framed in the suit "whether the suit is barred by limitation".

For the reasons stated supra, I do not find any merit in the Revision and it is accordingly, dismissed.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

05th September 2018

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