

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION NO.4039 OF 2015**

**ORDER:**

This civil revision petition is filed under Article 227 of Constitution of India challenging the order dated 26.08.2015 passed in I.A.No.312 of 2015 in O.S.No.76 of 2009 by the Senior Civil Judge – cum –Election Tribunal at Sathupally, whereby, the petition filed under Order VI Rule 17 of Code of Civil Procedure (for short “C.P.C.”) was dismissed.

The petitioner is the defendant in the main suit. He filed a petition under Order VI Rule 17 of C.P.C. to amend the written statement raising a specific plea that the suit value was not property mentioned in the plaint and the value of the property of an extent of 2984 sq.yards costs around Rs.40,00,000/-, therefore, he sought for permission to raise such plea in the written statement about under valuation of suit.

The respondent/plaintiff denied the material averments in the petition and contended that the petitioner himself filed a suit O.S.No.21 of 2009 for partition and valued the property approximately at Rs.17,00,000/- based on the market value certificate issued by Sub-Registrar, Sathupally and now cannot take ‘U’ turn that the market value is more than Rs.40,00,000/- by way of amendment by invoking power under Order VI Rule 17 of C.P.C. to amend the written statement.

Upon hearing argument of both the counsel, trial Court dismissed the petition on the ground that the petitioner himself filed O.S.No.21 of 2009 for partition valued the property at

Rs.17,00,000/- based on the market valuation certificate issued by Sub-Registrar, Sathupally, now he cannot go back and the proposed amendment would cause prejudice to the rights of the plaintiff in the main suit.

Aggrieved by the order of the trial Court, the present revision is filed on the ground that it is pre-trial amendment, the Court ought to have allowed the application as a matter of routine and the basis for amendment is the valuation certificate issued by the Sub-Registrar, Sathupally on 27.04.2014 and it does not amount to withdrawing any admission and prayed to set aside the order passed by the trial Court and allow the petition.

Learned counsel for the petitioner reiterated the grounds urged in the petition and contended that the amendment sought for is the pre-trial amendment and it would not change the nature of suit or it would not amount to withdrawing the admission, if any, made in the pleadings, and the Court can allow such amendments liberally, but if the amendment sought for is post-trial amendment, the Court has to take into consideration the proviso to Order VI Rule 17 of C.P.C. and the same can be allowed subject to satisfaction of the Court that in spite of exercise of due diligence he could not raise such plea, but the Court did not consider the same in proper perspective and committed an error in dismissing the petition and prayed to allow the revision by setting aside the order passed by the Court below.

Learned counsel for the respondent supported the order passed by the Court below in all respects and contended that if the petitioner is permitted to amend the written statement, the value of the suit will be increased and the Senior Civil Judge loose pecuniary

jurisdiction and it would cause serious prejudice to the respondent/plaintiff and prayed to dismiss the revision.

Admittedly, in the suit the plaintiff filed affidavit under Order XVIII Rule 4 of C.P.C. in lieu of examination-in-chief and the suit is posted for cross-examination of P.W.1. Filing of affidavit and receiving the same is only administrative act and unless the cross-examination is commenced, it is difficult to conclude that the trial is commenced. Therefore, it is difficult to hold that the proposed amendment is post-trial amendment. It is settled legal position that pre-trial amendment can be allowed liberally to put an end to the real controversy and to avoid multiplicity of proceedings. Even otherwise, the proposed amendment would not change the defence set up by the defendant and it is only by way of additional plea questioning the valuation of the suit. Therefore, no prejudice would be caused and the Senior Civil Judge will not cease to hold pecuniary jurisdiction as on date. Principles governing the amendment of plaint and written statement are different and the yardsticks for granting leave to amend the plaint cannot be adopted to grant leave to amend the written statement. In the written statement, the defendant can raise inconsistent pleas, but he has to limit his plea during trial to any of them. Therefore, the question of prejudice in this matter, if leave is granted, would not arise. But the trial Court committed error in dismissing the petition on the ground that the petitioner valued the property for Rs.17,00,000/- in the earlier suit O.S.No.21 of 2009 based on the market value certificate issued by Sub-Registrar, Sathupally, as the petitioner being the defendant entitled to take inconsistent pleas in the written statement. Therefore, the order

passed by the Court below is erroneous and the same is liable to be set aside.

In the result, the civil revision petition is allowed, setting aside the order dated 26.08.2015 passed in I.A.No.312 of 2015 in O.S.No.76 of 2009 by the Senior Civil Judge – cum – Election Tribunal at Sathupally and the I.A.No.312 of 2015 in O.S.No.76 of 2009 is allowed permitting the petitioner to amend the written statement. No costs. However, the respondent/plaintiff is entitled to file rejoinder, if he wishes to file the same.

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

15.03.2018  
Ksp

**JUSTICE M. SATYANARAYANA MURTHY**

