

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5554 of 2018

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed by the petitioner – 1st defendant assailing the order, dated 14.09.2018, of the learned Principal District Judge, Prakasam District, Ongole, passed in IA.No.1955 of 2018 in OS.No.32 of 2004.

2. I have heard the submissions of Sri M. R. S. Srinivas, learned counsel appearing for the revision petitioner – 1st defendant, and of Sri G. Pedda Babu, learned senior counsel, on caveat, appearing for the 1st respondent – 4th defendant.

2.1 As this Court is inclined to dispose of the revision petition at the stage of admission, no notices are ordered to the 3rd respondent – 2nd plaintiff and other respondents – defendants in the suit.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The sole plaintiff brought the suit against the defendant, who is his son, for partition of the plaint schedule properties, *inter alia*, alleging that the plaintiff and the defendant are entitled to a half share each in the plaint schedule properties. The defendant filed a written statement and is resisting the suit. On the death of the sole plaintiff, his wife and three daughters were impleaded as 2nd plaintiff and defendants 2,3 & 4 respectively, as per orders, dated 22.08.2017, of the trial Court passed in IA.No.1181 of 2017. After the impleadment of the parties, the 1st defendant filed an additional written

statement. The defendants 3 & 4 filed separate written statements. During the pendency of the suit, the 4th defendant filed the subject Interlocutory Application under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, requesting to amend the plaint and the plaint schedule as per the details mentioned in the memo of amendment. The proposed amendments as stated in the said memo apart from the amendments related to valuation of the relief and the Court fee are as follows:

“Add to para 3 of the plaint as follows:

An extent of Ac.1.31 cents belonging to late Bolineni Ramaiah covered by S.No.304/C/2A is the joint family property. 1st defendant fraudulently executed registered sale deed in favour of President of India for the purpose of National High Way in respect of Ac.0.72 cents out of Ac.1.31 cents and received a sum of Rs.1,11,88,000/- is held by as a trustee to all the sharers. Hence the consideration amount of Rs.1,11,88,000/- is shown as item no.18. Since the 1st defendant executed sale deed showing northern boundary as his remaining land which is an extent of Ac.0.59 cents is liable for partition and shown as item-19.

Amend prayer as follows:

(aa) For partition of items 18 & 19 of the plaint schedule into the respective shares of plaintiff and defendant.

Amend the plaint schedule by adding as follows:

Item No.18

Rs.1,11,88,000/- towards consideration amount of Ac.0.72 cents covered under Registered Sale Deed, dated 13.08.2014 executed by 1st defendant in favour of President of India.

Item No.19

Prakasam District, Ongole District Registration Koppolu Revenue Village merged with Ongole Municipal Corporation in Koppolu Village total extent in Survey No.304/C/2A is Ac.5.70 cents out of it Ac.1.31 cents from out of Ac.1.31 cents in the northern side portion of Ac.0.59 cents – bounded by:

EAST: Survey No.309 Aluri Ramanamma

SOUTH: Ac.0.72 cents covered under sale deed dated 13.8.2014

WEST: Railway land

NORTH: Bolineni Chalamaiah and another'

In the application filed by the 4th defendant for amendment of the plaint as well as the plaint schedule, the 1st defendant alone filed a counter and the plaintiff and other defendants reported no counter. On merits and by the order impugned, the learned District Judge partly allowed the application of the 4th defendant and directed to amend the plaint schedule by adding items 18 & 19 to the schedule of the plaint and rejected the 4th defendant's claim for amendment of pleadings in the plaint. Aggrieved of the said orders, the 1st defendant filed this revision petition.

4. The case of the 4th defendant in support of her request for amendment of the plaint, in brief, is this:

The suit is posted to 30.08.2018, for arguments after completion of cross-examination of DW1, who is recalled for the purpose of marking documents, as per the orders passed in an Interlocutory Application. One of the documents filed by DW1 is the certified copy of the order, dated 06.04.2015, in WP.No.2716 of 2014. This defendant filed the said writ petition specifically pleading that without following the procedure contemplated under the Land Acquisition Act, DW1 received Rs.1,11,88,000/- by way of execution of a fraudulent sale deed, dated 13.08.2014, in favour of the President of India in respect of Ac.0.72 cents out of item no.6 of the plaint schedule showing the survey no.304/C/2A instead of S.No.304/1. Due to the dismissal of the said writ petition, this defendant filed another writ petition in WP.No.17990 of 2017 for the same relief and it is pending. This defendant produced certified copy of registered sale deed, dated 13.08.2014; and, it was marked as exhibit B57, after recalling him as per orders, dated 01.08.2018. As cross examination of DW1 was done earlier, that is, on 17.04.2018, the counsel for this defendant

had no opportunity to cross-examine DW1 with reference to exhibits B54 to B61, which were marked subsequently. During the course of cross examination, on 24.08.2018, DW1 categorically admitted the recitals in the sale deed that he got Ac.1.31 cents of land in S.No.304/C/2A from his grand father Ramaiah and grand mother Ravamma. It is the specific case of this defendant in her written statement that Rs.1,11,88,000/- received by DW1 is towards acquisition of Ac.0.72 cents out of item no.6 of the plaint schedule land. When the counsel of this defendant cross examined DW1, he stated that item 6 covered by S.No.304/1 has nothing to do with the land of Ac.0.72 cents out of Ac.1.31 cents sold by him under exhibit B57 covered by S.No.304/C/2A. The 1st defendant has taken a hostile stand that the said amount received by him under exhibit B57 is not relating to item 6 of the plaint schedule. He has categorically admitted that the same devolved upon him from grand father, Ramaiah. The amount of Rs.1,11,88,000/- received by him is held by him as a trustee for other sharers including this defendant. It is, therefore, just and necessary that the sum of Rs.1,11,88,000/- received by the 1st defendant must be included as one of the items of the plaint schedule. The 1st defendant is admittedly in possession of balance extent of Ac.0.59 cents in S.No.304/C/2A shown as Northern boundary of the schedule in exhibit B57. The said extent of land is also liable for partition among the sharers. The said extent of land must be included as one of the items of the plaint schedule. For the said purpose, plaint schedule has to be amended. In spite of due diligence, amendment could not be sought earlier as the 1st defendant has come forward with the plea that the land of Ac.1.31 cents in S.No.304/C/2A has nothing to do with item no.6 of the plaint schedule only during the course of his cross examination done, on 24.08.2018, by categorically admitting that the said land

devolved from the grand father, Ramaiah. Hence, inclusion of two items in the plaint schedule is just and essential. The amendment sought for will not create any new cause of action and new case since the said items are also to be partitioned among the sharers after including them as items 18 & 19 in the plaint schedule.

5. The case of the 1st defendant, who is resisting the amendment application of the 4th defendant, in brief, is this:

By any stretch of imagination, it cannot be said that the parties can move an application under Order VI Rule 17 of the Code for amendment of the pleadings of the opposite party. The parties are entitled to amend their own pleadings; but, parties cannot pray for permission to amend the pleadings of the opposite party. Such a course is impermissible under law. When specific provision for amendment of pleadings is available, the Courts cannot exercise inherent powers under Section 151 of the Code for allowing such prayers for amendment of the pleadings of the opposite parties. The petition is misconceived. The 4th defendant admitted in her pleadings in her written statement that the 1st defendant received Rs.1,11,88,000/- by way of executing sale deed, on 13.08.2014, in favour of the President of India in respect of Ac.0.72 cents of item 6 of the plaint schedule. Now, by seeking amendment of plaint, she wants to amend the plaint and withdraw the admission made by her in her written statement. The same is not permissible under law. By way of an amendment, admission cannot be withdrawn and amendment of pleading withdrawing an admission cannot be permitted. Such an amendment takes away the right accrued to this 1st defendant. In the plaint, there is no pleading with regard to land acquisition proceedings. The amendment if permitted

changes the nature of the suit and causes prejudice to this defendant. The suit is filed in the year 2004. The trial in the suit is completed. The amendment petition is not maintainable in the absence of the 4th defendant establishing that she could not have sought for amendment earlier, inspite of due diligence. The 4th defendant is having knowledge of the sale deed and the boundaries mentioned therein. She did not take steps for amendment earlier. There is no explanation from her, for not doing so. The 4th defendant wants to introduce a new relief by way of amendment of plaint and the plaint schedule. The relief has to be claimed within 3 years from the date of receipt of the amount of Rs.1,11,88,000/-. The cause of action is different for the said relief. If the plaint is permitted to be amended at the instance of the 4th defendant at this stage, all the witnesses have to be recalled, further examined and cross-examined. Hence, the petition may be dismissed.

6. Learned counsel for the 1st defendant and the learned counsel for the 4th defendant advanced arguments in line with the pleadings of the respective parties, which are referred to supra.

7. Learned counsel for the 1st defendant strongly contended as follows: -
“The 4th defendant, being an opposite party, cannot seek amendment of the plaint. Therefore, the trial Court committed a grave error in permitting the 4th defendant to amend the plaint schedule more particularly when the amendment, if allowed, enables her to withdraw the admission in her written statement. An amendment of pleading for withdrawal of an admission in the pleading cannot be permitted. The amendment, which was permitted by the trial Court, caused prejudice to the 1st defendant. Admittedly, the trial is completed and the suit is at the stage of hearing arguments. Therefore, the

amendment is barred in view of the *proviso* appended to Order VI Rule 17 of the Code, which curtails the power of the Courts in allowing amendments. The 4th defendant failed to establish that despite due diligence she could not have sought for the amendment earlier. The trial Court referred to a decision of the Madras High Court in **Solavaiammal and others v. Ezhumalai Goundar and another**¹ and failed to follow the settled legal position laid down in the decision of this Court, which is binding. Therefore, the order impugned is illegal & unsustainable and is liable to be set aside.’

8. Learned counsel appearing for the 4th defendant having drawn the attention of this Court to the factual aspects of the matter in extenso and the fact of the dismissal of a writ petition filed by the 4th defendant and the pendency of another writ petition filed for the same relief before this Court, contended that in a suit for partition, every party is a plaintiff and that in the facts and circumstances of the case stated, in detail, in the affidavit of the 4th defendant, the amendment of the plaint and the plaint schedule at her instance is permissible and that, therefore, the trial Court is justified in allowing the amendment partly and permitting to add two items of property to the schedule of the plaint as according to the 4th defendant the said two additional items being sought to be added by way of amendment to the schedule of the plaint are also the properties, which are liable for partition among the sharers.

9. Learned counsel for the 1st defendant, in reply, contended as follows: ‘If any properties, which are liable for partition are omitted by the plaintiff to be included in the plaint schedule, an efficacious remedy is available to the defendant. The defendant can as well show such omitted items in the schedule

¹ 2011(5) LW 859

that may be annexed to his/her written statement and seek partition of the said items also by making the necessary prayer in the written statement. However, on the ground that a few items liable for partition are omitted to be mentioned in the schedule of the plaint, a defendant cannot seek the amendment of the plaint and/or the plaint schedule. Therefore, if the 4th defendant so desires, it is for the said defendant to file a written statement with schedule, by showing the omitted items of the property, which are liable for partition, in such schedule annexed to the written statement and seek partition of the written statement schedule properties along with the items mentioned in the plaint schedule; but, such a defendant cannot seek amendment of the plaint or the plaint schedule.'

10. In further reply, learned counsel appearing for the 4th defendant contended that in the event this Court comes to the conclusion that at the instance of the 4th defendant, the plaint schedule cannot be permitted to be amended, liberty may be reserved to the 4th defendant to seek amendment of the written statement and annex a schedule to the written statement by including the subject two items of property in the interests of justice.

11. I have given earnest consideration to the facts and submissions.

12. Now the point for determination is – 'whether the order of the trial Court permitting the 4th defendant to amend the plaint schedule by adding items 18 & 19 to the original schedule of the plaint is unsustainable under facts and in law?'

12.1 Admittedly, the sole plaintiff filed the suit against his son, the sole defendant. On his death, his wife was impleaded as second plaintiff; and, his

daughters were brought on record as defendants 2,3 & 4. The 1st defendant is contesting the suit by filing the written statement. He also filed additional written statement after the impleadment of the other LR's of the sole plaintiff. The impleaded 4th defendant filed her written statement. After the trial has concluded and when the matter is at the stage of arguments, the 4th defendant filed the instant application seeking permission to amend the plaint and the plaint schedule. Her main contention is that two properties which are shown as items 18 & 19 in the memo of amendment, that is, consideration amount of Rs.1,11,88,000/- and Ac.0.59 cents in the Northern side portion in S.No.304/C/2A are to be included in the plaint schedule as the said properties are also liable for partition; but, the said properties were omitted from the plaint schedule. Thus, the 4th defendant sought for permission for amendment of the plaint and the plaint schedule as well. However, the trial Court while declining to grant the request of the 4th defendant to amend the plaint, partly allowed her application and granted permission to amend the plaint schedule by including the proposed items 18 & 19 in the schedule of the plaint as items 18 & 19. In the first place it is to be noted that the Court below committed a grave error in permitting the amendment of the schedule of the plaint only, at the instance of the 4th defendant, as mere amendment of the schedule alone without corresponding or supporting pleading as to how the added items of property are also liable for partition would serve no purpose and would be of no avail to the 4th defendant. The law is well settled that any amount of evidence that may be adduced without a foundation in the pleading would be of no avail. Hence, the order of the Court below partly allowing the request of the 4th defendant in so far as the amendment of the schedule of the plaint, would not serve any purpose whatsoever being of no benefit to the 4th

defendant as her request for the amendment of the pleading in the plaint was negatived and the said part of the order of the trial Court has become final. On the above analysis, this Court finds that the order of the trial Court is liable to be set aside.

12.2 The principal contention of the 1st defendant is that the 4th defendant being one of the defendants cannot be permitted to amend the plaint or the plaint schedule, which is a part of the pleading of the opposite party. However, the case of the 4th defendant is that in a suit for partition, every defendant is also a plaintiff; and, hence the 4th defendant is entitled to seek the amendment of the plaint and the plaint schedule; and, that the Court below is justified in permitting the 4th defendant to amend the schedule of the plaint.

12.3 It is indisputable that the plaintiff is entitled to design his/her pleadings and make averments in the plaint according to his/her stand and in support of the reliefs claimed in the plaint and that, therefore, at the instance of a defendant, the plaint and/or the schedule of the plaint cannot be permitted to be amended as a defendant is not the author of the plaint and the plaint schedule. It is pertinent to note that second plaintiff, who is the mother of the parties, has not sought amendment of the plaint to include the subject two items of property (items 18 & 19) to the schedule of the plaint. Though in a suit for partition, every party is a plaintiff, on that score one party cannot be permitted to amend the pleadings of the opposite party as such a course would lead to chaotic & complex situations and multifarious consequences. Take a case where one of the defendants in a suit for partition intends to claim that one of the items included in the schedule of the plaint is his separate property and that the said item of property is not liable for partition; in such a case, he

cannot seek for deletion of the averments in the plaint related to the said item of property and also the deletion of the said item of property from the schedule of plaint. He can only file a written statement with necessary averments in support of his claim & defence and pray for the dismissal of the suit insofar as the disputed item of property. Take another case where in a suit for partition, one defendant who wants an item of property to be deleted from the schedule of the plaint seeks amendment of the plaint whereas another defendant wants the said item to be retained in the schedule of the plaint; in such a case there will be a stalemate/impasse as the Court cannot pre-judge the issue with regard to the said item of property; the said issue cannot be resolved, except after the conclusion of trial. Therefore, in all such and other like cases, the only course open to the contesting defendant is to design the pleadings in his/her written statement to suit his/her claim or defence, but such a defendant cannot seek amendment of the plaint and/or the plaint schedule. Such defendant also can, if necessary, seek amendment of his/her written statement. Any such application for amendment of written statement, if necessary and if filed, will, for sure, be decided on its merit. Therefore, the contention that in a suit for partition every defendant is also a plaintiff and hence, any defendant can seek the amendment of the plaint and/or the plaint schedule is a misconceived and untenable contention.

12.4 Even the High Court of the Madras in the above said decision, which was also referred in the impugned order of the trial Court, did not lay down a principle that a plaint can be permitted to be amended at the instance of the defendant. The question referred for a decision of the Division Bench of the Madras High Court was – ‘Whether the amendment of plaint in a partition suit

can be allowed at the instance of the defendants?’ In the operative portion of the judgment, the Madras High Court held as follows: - ‘**As we have been called upon to answer the question as to whether the application under Order VI, Rule 17 of the Civil Procedure Code seeking for amendment of the schedule to the plaint in a partition suit at the instance of the defendant is maintainable or not, we answer the said issue by holding that while considering such an application, it is for the Court to decide on the facts of each case. The reference is answered accordingly.**’ This decision, in the considered view of this Court, has no persuasive value either.

12.5 Further, this Court, in **P. Mahalakshmi and another v. Nagolu Ramanamma and others**² dealing with a request of the defendants 1 & 2 for permission to amend the plaint schedule by adding item no.1 to the plaint ‘A schedule’ to the plaint in a suit for partition, held as follows: -

‘I am thoroughly satisfied that this application itself is a misconceived one since, such application cannot be maintained by the defendants. It is needless to say that especially in the light of the remand order of this Court, the revision petitioners – Defendants 1 and 2 are at liberty to amend their own pleadings, if they are so advised, raising these pleas. Except making this observation, no other relief can be granted in favour of the revision petitioners in the present CRP. In the light of the same, the other aspects need not be considered.’

12.6 Further, in the decision in **Chilakani Venkata Rao vs Ch. Lakshman Rao And Ors**³, the facts are as under:

‘In a suit for partition filed by the brothers of the revision-petitioner, who is the first defendant, the revision petitioner/1st defendant filed a petition to implead one Nataniel as a party to the suit on the ground that his brothers alienated some property to Nataniel and so he is a

² 2004(2) L.S. 156

³ 2006(3) ALD 614

necessary party to the suit; that petition was allowed; and, that order was confirmed by this Court in a revision. Thereafter, revision-petitioner/1st defendant filed a petition seeking amendment of the plaint for inclusion of the properties alienated to Nataniel. The said petition was dismissed on the ground that the defendant in a suit cannot seek amendment of the plaint. Hence, he filed the revision.'

This Court while dismissing the revision petition held as under:

'It is well known that in a suit for partition all parties, who have a share in the properties to be partitioned, would be in the position of plaintiffs and can take all the pleas, which a plaintiff can take, and so their written statements also would be in the nature of plaints. So, if the revision-petitioner felt that the property alienated by the plaintiffs to Nataniel also has to be taken into consideration for deciding the question as to what are the properties that are to be partitioned between the parties, he should have mentioned that fact in the written statement. If he had not done so, he should have sought leave of the Court to amend his written statement for inclusion of the property alienated to Nataniel in the properties to be partitioned. As rightly observed by the trial Court, question of a defendant seeking leave to amend the plaint by inclusion of certain properties in the plaint schedule does not arise, as plaint contains the case of plaintiffs but not that of the defendant. So, it is only the plaintiff that can seek amendment of the plaint under Rule 17 of Order VI CPC. Therefore, I find no merits in this revision.'

The ratio in the above decision squarely applies to the facts of the case as in that decision, this Court categorically held that in a suit for partition, the defendant cannot seek amendment of the schedule of the plaint and that if the defendant so desires, it is for the defendant to amend his own pleadings.

13. In view of the settled legal position and the abhorrent/horrendous consequences which flow if a party is permitted to amend the pleadings of the opposite party even in a suit for partition, this Court finds that the trial Court

committed a grave error in permitting the 4th defendant to amend the plaint schedule.

14. On the above analysis, this Court finds that the order impugned brooks interference.

15. In the result, the Civil Revision Petition is allowed; and, the impugned order is set aside. As a sequel, IA.No.1955 of 2018 is dismissed, however, reserving liberty to the 4th defendant to seek amendment of her written statement, if she so desires and is so advised. It is needless to state that in the event the 4th defendant files any application for amendment of her written statement, the said application shall be decided on its merit and in strict accord with the procedure established by law, uninfluenced by the observations, if any, in this order.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.



M.SEETHARAMA MURTI, J

10.10.2018

Note: LR copy to be marked.

[b/o]

Vjl