

THE HON'BLE MS. JUSTICE J. UMA DEVI

CRP NO. 5851 of 2017

ORDER:

The revision petitioner herein is the 4th respondent in IA No. 183 of 2014 in O.S.No. 248 of 2014 on the file of the Junior Civil Judge, at Bellamapalli which is filed under Order VI, Rule 17 read with Section 151 of the Code of Civil Procedure (CPC) seeking to amend the boundaries to the plaint schedule property. Since the said petition is allowed, the revision petitioner who has been aggrieved by it, has come before me by presenting the present revision petition.

The fact which is not in dispute is that the amendment petition is not contested by other respondents except by 4th respondent (the revision petitioner herein). He alone seems to have filed his counter-affidavit opposing the proposed amendment.

The revision petitioner's main contention is that the learned trial Judge, without considering his serious objection that the proposed amendment changes the basic structure of the suit, and that there is a long delay of 10 years in filing of the petition, has ordered for amendment of the boundaries of the plaint schedule property and the order so passed, grossly affects his right of defence etc.

The learned counsel for the respondents/plaintiffs states that the proposed amendment no way causes prejudice to the case of the revision petitioner and through the proposed amendment the respondents herein are not introducing new cause of action. He also states that Courts are conferred with powers to allow either parties to alter or amend their

pleadings at any stage of the proceedings if such amendment is necessary for determination of real issues in controversy. The right of defence of the revision petitioner is not going to be affected in any way as he will be given the chance of filing his additional written statement. Since no new cause of action is introduced by the proposed amendment, the trial Judge, by citing the ratio laid down in various other cases, has rightly allowed the amendment petition.

I have gone through the order impugned in the present revision petition, so also the case law cited by the revision petitioner in *L.C. Hanumanthappa Vs.H.B. Shivakumar*¹.

The trial Court in its order seems to have made a reference as to the observations made by the Supreme Court in *Usha Devi Vs. Rijwan Ahmad and Ors.*², which reads as under,

“.....in order to allow the prayer for amendment the merit of the amendment is hardly a relevant consideration and it will be open to the defendants-respondents to raise their objection in regard to the amended plaint by making any corresponding amendments in their written statement.”

Since the main issue revolves on the question, whether the Court below has committed any error by allowing the amendment petition, it is necessary to refer to the relevant provision of law i.e., Order VI, Rule 17 CPC under which the petition is filed.

Order VI, Rule 17 CPC which confers powers on the Courts to order for amendment of pleadings reads as under,

¹ AIR 2015 SC 3364

² AIR 2008 SC 1147

“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.”

A plain reading of the above mentioned provision of law makes it clear that the Courts are conferred with the power of permitting either party to amend their pleadings at any stage of the proceedings if such amendment is necessary for determination of the real questions in controversy and such amendment is permissible before commencement of trial in the suit. In the present case the trial in the suit has not been commenced so far, and no prejudice is going to be caused to the revision petitioner as he has got the opportunity of raising his objections by filing an additional written statement. The proposed amendment is not altering or changing the cause of action and it also does not affect his right of defence as he has got the chance of meeting the case of the plaintiffs as amended, by way of filing his additional written statement. Even in the case law cited by the revision petitioner in ***L.C. Hanumanthappa Vs.H.B. Shivakumar*** (1st supra), while referring to its decision in

Sampath Kumar v. Ayyakannu and another (2002) 7 SCC 559), it is held as follows,

“Order 6 Rule 17 Code of Civil Procedure confers jurisdiction on the court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made. The question of delay in moving an application for amendment should be decided not by calculating the period from the date of institution of the suit alone but by reference to the stage to which the hearing in the suit has proceeded. Pre-trial amendments are allowed more liberally than those which are sought to be made after the commencement of the trial or after conclusion thereof. In the former case generally it can be assumed that the Defendant is not prejudiced because he will have full opportunity of meeting the case of the plaintiff as amended. In the latter cases the question of prejudice to the opposite party may arise and that shall have to be answered by reference to the facts and circumstances of each individual case. No straitjacket formula can be laid down. The fact remains that a mere delay cannot be a ground for refusing a prayer for amendment.”

It is true that the respondents/plaintiffs have not taken steps for filing of the petition for amendment of boundaries to the plaint schedule property at the initial point of time, but this cannot be a ground to reject their request. Having regard to the fact that the plaintiffs have not taken steps for filing of the amendment petition soon after filing of the suit, it is

just and proper, in my opinion, to impose costs of Rs.1500/- (Rupees One Thousand and Five Hundred only) on the revision petitioner. The costs imposed is payable by the respondents/plaintiffs to the revision petitioner within one week from the date of receipt of the copy of this order.

The revision petition is accordingly disposed of. Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE J. UMA DEVI

Dt.23.2.2018
KR

