

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5862 OF 2017

ORDER:

This revision petition is filed, under Article 227 of the Constitution of India, challenging the order dated 30.08.2017 in I.A. No.449 of 2017 in O.S. No.2174 of 2014 passed by the XX Junior Civil Judge, City Civil Court, Hyderabad, whereby the learned Junior Civil Judge dismissed the petition filed under Rule 17 of Order VI of the Code Of Civil Procedure, 1908 (for short 'CPC').

The petitioners herein filed a suit for injunction simplicitor and also filed an application in I.A. No.494 of 2014 under Rules 1 and 2 of Order XXXIX of CPC for grant of interim injunction. The said I.A. was ended in dismissal holding that the petitioners are not in possession of the suit schedule property as on the date of filing the suit. Thereafter the petitioners filed I.A. No.449 of 2017 under Rule 17 of Order VI of CPC alleging that during March 2017 the petitioners are dispossessed from suit schedule property, and sought for leave of the Court to amend the plaint i.e., pleadings, cause of action, relief and other paragraphs in the plaint.

The respondent filed counter denying the material allegations *inter alia* contending that the petitioners were out of possession even by the date of filing the suit, and therefore, dispossession is not subsequent event pending the suit and prayed for dismissal of the petition.

The trial court, while deciding the petition, adverted to the proposed amendment to find out whether the petitioner will succeed in the main suit or not and concluded that there is no

material to grant leave to the petitioners, to amend the plaint and dismissed the petition. Aggrieved thereby, the present revision petition is filed mainly on the ground that while deciding the application under Rule 17 of Order VI of CPC, the Court cannot go into the merits of the proposed amendment, and at best, examine the issue within the parameters specified in various judgments of the Apex Court and it is a pre-trial amendment, it can be allowed, but the court below failed to take into consideration the relevant facts and prayed to set-aside the order under challenge.

Sri *M.R.S. Srinivas*, learned counsel for the petitioners, would contend that the court below is not expected to advert to the merits of the proposed amendment while deciding the application filed under Rule 17 of Order VI of CPC, and at best, the court can examine whether the proposed amendment is barred by law or inconsistency with the relief claimed in the suit or would it alter the nature of the suit. Instead of examining those issues, the court below went on deciding the merits of proposed amendment, dismissed the petition and prayed to set aside the same.

Sri *Vedula Srinivas*, learned counsel for the respondents supported the order in all respects while contending that the alleged dispossession in the month of March 2017 is not correct and the petitioners were out of possession on the date of filing the suit itself and when the amendment is based on subsequent event, it can be accepted, but at this stage, this Court cannot appreciate the facts of the case and prayed for dismissal of the petition.

Considering rival contentions, perusing the material available on record, the point that arise for consideration is,

Whether the court below is right in dismissing the petition based on the proposed amendment? If not, whether the petitioners are entitled leave to amend the plaint under Rule 17 of Order VI of CPC?

POINT:

It is an undisputed fact that the petitioners filed a suit for injunction simplicitor claiming that they are in possession and enjoyment of the property while alleging that the respondents are trying to infringe or invade their legal rights and sought for temporary injunction in I.A. No.494 of 2014 under Rules 1 & 2 of Order XXXIX of CPC, which ended in dismissal and attained finality.

Thereafter the petitioners filed I.A. No.449 of 2017 asserting that they were dispossessed during the month of March 2017. The said petition was dismissed holding that the petitioners failed to prove their possession as on the date of filing the suit, therefore, the alleged dispossession during March, 2017 appears to be an invention. However, it is a pre-trial amendment, since no trial was commenced in the suit. When the suit is filed for perpetual injunction, conversion of it into recovery of possession may change its nature.

Order VI Rule 17 C.P.C deals with 'Amendment of pleadings' and according to it, 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.

Learned counsel for the petitioners contended that dismissal of application based on merits of the proposed amendment is an illegality. The law is well settled that while deciding the application under Order VI Rule 17 of CPC, the Court cannot go into merits of the proposed amendment. Therefore, dismissal of the petition based on the proposed amendment is an illegality committed by the court below.

In **Rameshkumar Aggarwal v. Rajamala Exports Private Limited and others**¹, the Apex Court relying on **Revajeetu Builders and Developers v. Narayanaswamy & Sons and others**², to decide the scope of proviso to Rule 17 of Order VI of CPC laid down certain guidelines for granting or denying relief under Rule 17 of Order VI of CPC viz., as follows:

“1) Whether the amendment sought is imperative for proper and effective adjudication of the case;

2) Whether the application for amendment is bona fide or malafide;

3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

4) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(5) Whether the proposed amendment constitutionally or fundamentally nature and character of the case?

And

(6) As a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.

In **Bairam Susheela v. Pendota Rama Rajaiah**³, this Court held that mere grant of permission to amend the pleadings does

¹ AIR 2012 SC 1887

² 2009(8) SCJ 401

³ 2004 (5) ALT 233

not confer or take away the rights of the parties. On the basis of the proposed amendment, necessary issues have to be framed after giving an opportunity to the other party and evidence has to be adduced on the issues so framed, if necessary. It shall always be open to the parties to raise such pleas as are open to them touching on the relief introduced through amendment. In view of the principles laid down in the amendment as to application filed under Rule 17 of Order VI of CPC before commencement of trial liberally.

In the present facts of the case, the alleged dispossession took place during the month of March 2017. Therefore, the proposed amendment relates to back date to the filing of the suit, but not by the date of filing of the plaint and that too, claim of the petitioners for recovery of possession is not barred by limitation as per Section 21 of the Limitation Act.

In the latter judgment in **Chakreshwari Construction Private Limited v. Manohar Lal**⁴ the Apex Court held that some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment:

- 1) Whether the amendment sought is imperative for proper and effective adjudication of the case;**
- 2) whether the application for amendment is bonafide or malafide;**
- 3) the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;**
- 4) refusing amendment would in fact lead to injustice or lead to multiple litigation;**
- 5) whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and**
- 6) as a general rule, the court should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application.**

⁴ (2017) 5 SCC 212

These principles are borrowed from **Revajeetu Builders and Developers** case referred supra and held that the court can grant leave to amend the pleadings, if it is pre-trial amendment, subject to guidelines therein the above judgment, but in the present case, the proposed amendment would not change the nature of suit substantially.

Hence, I find that the order based on the proposed amendment is an error apparent on the face of the record and the same is liable to be set aside exercising power under Article 227 of the Constitution of India. Accordingly, the point is answered in favour of the petitioners and against the respondents.

In the result, the petition is allowed setting aside the order dated 30.08.2017 in I.A. No.449 of 2017 in O.S. No.2174 of 2014 passed by the XX Junior Civil Judge, City Civil Court, Hyderabad. No costs.

Miscellaneous Petitions, if any, pending in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

Date:13.03.2018
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