

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.6723 OF 2017

ORDER:

Assailing the order, dated 05.10.2017, passed in I.A.No.1318 of 2017 in O.S.No.288 of 2014 on the file of Senior Civil Judge, Ramachandrapuram, wherein the application filed by the petitioners to amend the plaint schedule in the original plaint as per Ex.A1, Agreement of sale – cum – G.P.A., dated 09.10.2007, was rejected, the present revision petition came to be filed under Article 227 of the Constitution of India.

2. Heard learned counsel for the petitioners. In spite of service of notice, there is no representation on behalf of respondent No.2. Respondent No.1 is not a contesting party to the Suit.

3. The petitioners/plaintiffs filed the aforesaid Suit seeking specific performance of agreement of sale, dated 09.10.2007, by directing the respondents/defendants to execute registered sale deed in their favour in respect of the plaint schedule property and in alternative, direct the respondents/defendants to refund the purchase amount of Rs.4,58,500/- received by them under the said agreement of sale with interest.

4. Written statement came to be filed by respondent No.2/defendant No.2 on 09.03.2015. In the said Suit, PWs.1 and 2 filed their respective chief examination affidavits. Thereafter, in the year 2017, the present Interlocutory Application came to be filed by the petitioners stating that when the case was posted for cross-examination, it was noticed that the plaint schedule was mistakenly noted. It is stated that after the death of husband of petitioner No.1, the petitioners filed the present Suit basing on the agreement of sale – cum – G.P.A. executed by the respondents/defendants and also filed another Suit against one Ponnada Lalithamba on the same averments, as she also executed a G.P.A in favour of the husband of petitioner No.1. Both the suits i.e., O.S.No.343 of 2014 and the present Suit were prepared in the office of one counsel and by mistake, the plaint schedule mentioned in O.S.No.343 of 2014 was appended as plaint schedule in the present Suit. It is stated that the mistake is not intentional and if the same is not corrected, the petitioners will be put to great loss. Hence, it is pleaded that the plaint schedule requires amendment, as per Ex.A1, agreement of sale – cum – G.P.A.

5. Counter came to be filed before the trial Court disputing the averments in the affidavit filed in support of the Interlocutory Application. It is stated that the averment made in the affidavit that by mistake the plaint schedule in

O.S.No.343 of 2014 was appended as plaint schedule to the present Suit is false and invented for the purpose of this case. It is further stated that though it is mentioned in the written statement that the schedule mentioned is not true and correct, no steps have been taken to get the same corrected, at the earliest point of time. It is further stated that since issues were already framed and chief affidavits of PWs.1 and 2 were also filed, the question of amending plaint schedule, at this stage, would not arise.

6. After hearing both sides and taking into consideration the material available on record, the trial Court rejected the request of the petitioners only on the ground that it will not be proper to permit amendment after the commencement of trial. Challenging the same, the present revision petition came to be filed.

7. Learned counsel for the petitioners submits that the mistake has occurred in the office of the Advocate, where two Suits were prepared, and by mistake the schedule of property mentioned in one Suit was appended as schedule in the present Suit. It is further pleaded that even if a decree is passed in favour of the petitioners, they will not be in a position to get the same executed, as localization of the specific lands would become very difficult.

8. As it is stated earlier, in spite of service of notice, there is no representation on behalf of respondent No.2.

9. The Honourable Apex Court in **Surender Kumar Sharma v. Makhan Singh**¹, observed that even if the amendment prayed for is belated, while considering such belated amendment, the Court must bear in favour of doing full and complete justice in the case where the party against whom the amendment is to be allowed, can be compensated by costs or otherwise. In **Baldev Singh and others v. Manohar Singh and another**², the Honourable Apex Court held that in view of the provisions made under Order VI Rule 17 C.P.C., it cannot be doubted that wide power and unfettered discretion has been conferred on the Courts to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the Court just and proper.

10. Issue identical to the case on hand came up for consideration before this Court in **Kasula Surender Reddy and another v. M. Ravinder Reddy and others**³. Dealing with an application, which was filed after commencement of trial, more particularly after cross-examination of PW.1, this Court observed as under:

“8. It is true that a liberal approach is required to be adopted whenever the pleadings set up by the parties

¹ (2009) 10 SCC 626

² (2006) 6 SCC 498

³ 2016 (1) ALD 437

are sought to be amended so long as no prejudice and no rights of the opposite parties are going to be impaired in the process. In *Sajjan Kumar's* case ((2005) 13 SCC 89), a three Judge Bench of the Supreme Court has noticed that the prayer for amendment in that case was opposed by the defendant/respondent inasmuch as he had taken a plea in the written statement itself that the suit premises was not correctly described, but yet, the plaintiff/appellant in that case proceeded with the trial of the suit and did not take care to seek the amendment at an early stage. In such a fact situation while allowing the appeal of the plaintiff, this is how the principle has been spelt out by the Supreme Court in Para 5 of the judgment:

“Still, we are of the opinion that the proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the Suit.”

9. In *Usha Devi's* case (2008 (3) ALD 1 (SC)), a two Judge Bench of the Supreme Court after noticing the earlier judgments of the Supreme Court in *Baldev Singh and others v. Manohar Singh and another*, 2006 (6) ALD 29 (SC) = 2006 (6) SCC 498; *Ajendraprasadji N. Pandey and another v. Swami Keshavaprakeshdasji N. and others*, 2007 (2) ALD 93 (SC) = (2006) 12 SCC 1 and *Kailash v. Nanhku*, 2005 (3) ALD 102 (SC) = (2005) 4 SCC 480 and also *Sajjan Kumar's* case (supra), allowed the amendment of the plaint averments. At this stage, it is only appropriate to notice the judgment of the Supreme Court in *Vidyabai's* case ((2009) 2 SCC 409), relied upon by Sri O. Manohar Reddy, was rendered by a two Judge Bench of the Supreme Court, speaking through Justice S.B. Sinha, after noticing the earlier judgments of the Supreme Court in

Ajendraprasadji's case (supra); *Baldev Singh's* case (supra); *Rajesh Kumar Aggarwal v. K.K. Modi*, (2006) 4 SCC 385 and *Salem Advocates Bar Assn. v. Union of India*, (2005) 6 SCC 344 and *Kailash's* case (supra) etc., posed the question as to whether the amendment of the pleadings can be allowed after the trial has commenced. In Para 10 after noticing the proviso to Rule 17 Order 6 CPC, it is held as under:

“It is couched in a mandatory form. The Court’s jurisdiction to allow such an application is taken away unless the conditions precedent therefore are satisfied viz., it must come to a conclusion that in spite of due diligence the parties could not have raised the matter before the commencement of the trial.”

10. ...

11. It would be appropriate to notice that *Vidyabai's* case (supra), has been decided by the Supreme Court on 12.12.2008 and subsequently on 9.10.2009 another two Judge Bench of the Supreme Court speaking through Justice *Dalveer Bhandari* in *Revajeetu Builders & Developers v. Narayan^{aswamy} & Sons and others*, (2009) 10 SCC 84, had traversed the entire gamut relating to amendment of the pleadings. In the course of the said judgment, Justice *Dalveer Bhandari* had noticed the basic principles behind grant or refusal of an amendment articulated more than 125 years ago in *Cropper v. Smith*, (1884) 29 Ch.D 700, where *Browen*, L.J., has brought out the relevant principle in the following words:

“It is a well established principle that the object of the Courts is to decide the rights of the parties and not punish them for mistakes they make in the conduct in their cases by deciding otherwise than in accordance with their rights ... I know of no kind of error or mistake which, if not fraudulent or intended to overreach, the court ought not to correct if it can be done without

injustice to the other party. Courts do not exist for the sake of discipline but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or grace ... it seems to me that as soon as it appears that the way in which a party has framed his case will not lead to a decision of the real matter in controversy, it is as much a matter of right on his part to have it corrected if it can be done without injustice, as anything else in the case is a matter of right."

12.

13. What emerges from the above legal principle is that the object of the Court is to decide the rights of the parties and *not to punish them for the mistakes they made in the conduct of their cases* by deciding otherwise than in accordance with their rights. The philosophy of the Indian Courts is no different. That is the reason why Justice *Dalveer Bhandari* has noticed the various essential principles and crystallized them in Para 67 of the judgment in *Revajeetu Builders's* case (Supra):

"The 1st principle is whether the amendment sought for is imperative for proper and effective adjudication of the case and the 3rd principle culled out was that the amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money and the 4th principle is refusing amendment would in fact lead to injustice or lead to multiple litigation."

14. It is true in *Vidyabai's* case (Supra), the Supreme Court has held that the language employed in the proviso to Rule 17 of Order VI CPC is couched in mandatory terms and that it does not leave much discretion in the hands of the Court. But, however, unfortunately the judgment of the Supreme Court in *Sajjan Kumar's* case (Supra), which was rendered by three Judge Bench of the Supreme Court has not been noticed by the Supreme Court while deciding

Vidyabai's case (Supra) and now going by the subsequent judgment of the Supreme Court in *Revajeetu Builders's* case (Supra), the amendment now proposed to be carried out to the plaint schedule is more in the nature of rectification of an error. 4 different survey numbers are mentioned in the plaint schedule and thereafter Mohammed Nagar Village, Kandukuru Mandal, Ranga Reddy District is mentioned, whereas now it is proposed to amend the plaint schedule pointing out which survey numbers falls in Mohammed Nagar Village and which other survey numbers fall in Kandukuru Village. By such an amendment, neither the nature of the suit nor the principal averments in the plaint and or the issue at controversy was sought to be altered. It is true as pointed out by the learned Counsel for the petitioners that the plaintiffs were not diligent enough in not noticing this mistake in spite of the written statement filed by defendant Nos.3 and 4 specifically in Para 2 itself, brought out clearly this error in the plaint schedule. But should the Court try to penalize for the mistake? It is true that the trial of the suit has commenced and obviously the plaintiffs have exhausted their side of collection of evidence and the turn of the defendants has come and even the defendants have also examined a couple of witnesses on their side. It is true the parties are required to lead evidence on the issues framed for adjudication and no amount of evidence collected otherwise can be looked into. Since the plaint averments are the ones which have offered the basis for settlement of issues between the parties, the amendment, in my opinion does not require any evidence to be led specifically or additionally by either of the parties. If, on the other hand, the amendment is not allowed, as pointed out in principle 4 culled out in *Revajeetu Builders's* case (Supra), it will lead to grave injustice to the plaintiffs

and would also lead to further litigation unnecessarily, should the plaintiffs succeed in the present suit. This apart they will never be able to workout the decree even if it is passed in their favour as localization of the specific lands in both the villages would become really difficult. Therefore, a monitory compensation to defendant Nos.3 and 4, in my opinion would have met the ends of justice for the lapse committed by the plaintiffs in not being very diligent in seeking amendment of plaint schedule much in time at any rate prior to trial having commenced. In my opinion, the proviso to Rule 17 Order VI CPC has still left discretion in the hands of the Courts to allow such an amendment inasmuch as no bar in absolute terms for allowing any such application for amendment is contained therein. On the other hand, it is left to the discretion of the Court to allow any such application after the commencement of trial provided the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter in time prior to the commencement of trial. This later half of the proviso, in my opinion, has to be understood in the context of the principles enunciated by the Supreme Court in *Revajeetu's* case (Supra). Viewed in this backdrop, the necessary exercise will have to be regulated accordingly.”

11. From the judgments referred to above, it is clear that proviso to Order VI Rule 17 C.P.C. has still left sufficient discretion in the hands of the Courts to allow such an amendment, inasmuch as no bar in absolute terms for allowing any such application for amendment is contained therein. It appears that certain amount of discretion is left to the Court in such an application, even after the

commencement of the trial, provided the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter prior to the commencement of the trial.

12. As seen from the record, when the case is posted for cross-examination, the counsel noticed the description of the schedule being contra to the schedule mentioned in Ex.A1, which is the agreement of sale – cum – G.P.A. It may be true that an objection with regard to plaint schedule was raised in the written statement, but having regard to the facts in issue, since the decree itself could not be executed, even if the petitioners succeed; as the mistake occurred in the office of the Advocate where two Suits came to be prepared and in the process of taking the print outs, the schedule of one Suit was shown as the schedule in the present Suit, and as no prejudice would be caused to the respondents, if the said request to amend the plaint schedule is accepted, this Court is of the opinion that the request of the petitioners to amend the plaint schedule can be accepted.

13. Accordingly, the Civil Revision Petition is allowed setting aside the order, dated 05.10.2017, passed in I.A.No.1318 of 2017 in O.S.No.288 of 2014 on the file of Senior Civil Judge, Ramachandrapuram. Consequently, I.A.No.1318 of 2017 is allowed and the petitioners are permitted to amend the plaint schedule.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

February 02, 2018
MD

