

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.2449 of 2018

O R D E R:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.22.02.2018 in I.A.No.125 of 2018 in FCOP.No.786 of 2014 of the Family Court, City Civil Court, Hyderabad.

2. Petitioner herein is the petitioner in the above said O.P. She filed the said petition to declare her right, title and interest in $\frac{1}{2}$ of the OP schedule property which is a house property, and for consequential injunction restraining the 1st respondent from alienating the property.

3. Counter was filed opposing the claim in the O.P.

4. Thereafter, issues were framed and trial commenced.

5. On 23.01.2018, after the evidence of both parties was concluded, petitioner filed I.A.No.125 of 2018 seeking amendment of the plaint by adding paras 4A to 4C, 10A and also to amend the prayers in the O.P.

6. In a table mentioned in the affidavit it is contended by the petitioner that certain payments were made amounting to Rs.22,21,000/- to the bank which financed the suit schedule property.

7. This application was opposed by the respondent alleging that the application for amendment had been filed after the trial had concluded and the application is filed only to delay the disposal of the case.

8. By order dt.22.02.2018, the Court below dismissed the said application holding that petitioner did not state why these amendments are required at the belated stage when the matter was posted for arguments; that petitioner had incorporated details of payments made by her subsequent to the filing of the case, and specific events after filing of the case cannot be considered, since the Court has to adjudicate the rights of the parties as existing on the date of filing of the main case. It also observed that amendment of pleadings cannot be permitted basing on subsequent events or developments, and that it appears that petitioner is uncertain about the reliefs she is seeking, and though relief of return of some original documents is sought for, no details of said documents are mentioned. It also observed that proposed amendments are quite contradictory and inconsistent with her original pleading in the main proceeding, and nature of the proceedings would change if the amendment is permitted and the respondents would be prejudiced in their defence.

9. Challenging the same, this Revision is filed.

10. Counsel for the petitioner sought to contend that what all the petitioner sought to bring on record are payments made by the petitioner for purchase of the suit schedule property and all these payments have been made subsequent to the execution of the sale deed by the buyer, though the said sale deed was executed only in favour of the 1st respondent, and therefore petitioner should be allowed to amend the plaint to include details of the payments made by her.

11. Counsel for the respondent however refuted the said contentions and supported the order passed by the Court below.

12. I have noted the contentions of both sides.

13. In my considered opinion the view of the Court below that events subsequent to filing of a case are not relevant and cannot be allowed to be pleaded by way of amendment is too broad a proposition and is not supported by any authority.

14. In fact the settled law is otherwise and permits subsequent events also to be brought on record provided they are relevant for adjudication of the suit or O.P.

15. In ***M/s. M.Laxmi and Co. v. Dr. Anant R. Deshpande***¹, the Supreme Court has held that where subsequent to the institution of a suit events happened, it gives subsequent new cause of action for the reliefs to claim or a right to claim additional pleadings and to amend the plaint by moulding it in an appropriate manner.

16. However, the Court has to keep in mind the *proviso* to Order VI Rule 17 CPC which permits post trial amendments if due diligence is established by the party seeking amendment of the pleadings, that they could not be sought before trial commenced.

17. In the instant case, admittedly the trial commenced from 05.08.2017 when PW1 was cross-examined by the counsel for the respondent. The instant application for amendment has been filed on 23.01.2018. Thus, the application for amendment has been filed after the trial commenced.

18. In the application for amendment filed by the petitioner, she sought to place on record facts relating to alleged payments made by her towards discharge of the loan of the property from 17.06.2011 to 12.10.2017 of which only three payments, i.e., Rs.50,000/- made on 09.08.2017,

¹ AIR 1973 SC 171

Rs.40,000/- made on 18.09.2017 and Rs.40,000/- made on 12.10.2017, were subsequent to 05.08.2017 and the rest of the payments allegedly made by the petitioner, are prior to 05.08.2017.

19. Therefore, nothing prevented the petitioner from seeking amendment by introducing details about the alleged payments before trial commenced on 05.08.2017. Thus, there has been lack of due diligence by the petitioner in that regard. However, as regards the above three payments made after 05.08.2017, which are subsequent to the commencement of trial, petitioner cannot be blamed for not having due diligence, since these payment events occurred after the trial commenced.

20. Therefore, the petitioner can be permitted to plead amend the plaint only as regards these three payments and cannot be permitted to refer to all other events which occurred prior to 05.08.2017.

21. Petitioner cannot also be allowed to seek amendment of the prayer or substitute there-for or claim an alternative relief and the *proviso* to Order VI Rule 17 CPC would come in the way, particularly, when no reason is assigned in the affidavit filed along with I.A.No.125 of 2018 as to why these

amendments could not be sought before the trial commenced.

21. Though counsel for petitioner cited a judgment in ***Rajesh Kumar Aggarwal and Others v. K.K. Modi and Others***² the said decision arise out of the suit filed before 01.07.2002 and observations made therein regarding power of the Court to permit amendment at any stage of the suit if said amendment is considered necessary to decide the real controversy in the suit, cannot be applied because *proviso* to Order VI Rule 17 CPC imposes a restriction ever since it came into existence from 01.07.2002 in permitting amendment after the trial commenced unless due diligence is proved by the party showing that he could not have raised the matter before the commencement of trial.

22. In ***Gurbakhsh Singh & Anr. v. Buta Singh & Anr.***,³ cited by counsel for petitioner also the suit in question had been filed in 1968, much prior to 01.07.2002. Therefore, the said decision also cannot be of any assistance to the petitioner.

23. Therefore, this Civil Revision Petition is allowed in part to the limited extent of permitting the petitioner to include the payments of three dates i.e., Rs.50,000/- made on

² 2006(4) SCC 385

³ 2018(6) SCC 567

09.08.2017, Rs.40,000/- made on 18.09.2017 and Rs.40,000/- made on 12.10.2017; and all other amendments sought by the petitioner are rejected and the order of the trial Court is confirmed in that regard. No order as to costs.

24. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

10th April, 2019.

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