

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.477 of 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/defendant No.2, challenging the order, dated 21.11.2017, passed in I.A.No.348 of 2017 in O.S.No.31 of 2008 by the IV Additional District Judge at Warangal, whereby, the petition filed by the respondent Nos.1 to 4 herein/plaintiffs under Order VI Rule 17 of CPC to permit them to amend the schedule of the suit by prefixing the words "house along with" before the words 'open land' in the schedule and to make consequential amendment to the schedule of the plaint, was allowed, on payment of costs of Rs.1,000/- to the D.L.S.A, Warangal, on or before 23.11.2017.

2. Heard the learned counsel for both the sides and perused the record.

3. The learned counsel for the revision petitioner/defendant No.2 would contend that though the subject suit was filed in the year 2008, amendment was sought belatedly, i.e., in the year 2017, without assigning justifiable reasons. The respondent Nos.1 to 4 herein/plaintiffs have not valued the subject matter of the suit properly. It is also contended that since the trial in the subject suit in O.S.No.31 of 2008 has been commenced and

the suit is at the fag end of trial, the amendment sought by the respondent Nos.1 to 4 herein/plaintiffs is not permissible in terms of the mandate given under Order VI Rule 17 of CPC. The Court below erroneously allowed the subject interlocutory application and ultimately prayed to set aside the order under challenge and dismiss the subject I.A.No.348 of 2017. In support of his contentions, the learned counsel had relied on a decision of the Hon'ble Apex Court in Sajjan Kumar Vs. Ram Kishan¹.

4. On the other hand, the learned counsel for the respondent Nos.1 to 4/plaintiffs would contend that the subject suit is filed for declaration of title and possession. In the plaint, there is a mention of raising structures over the suit schedule property. Pursuant to the proposed amendment to the schedule of the suit, valuation of the subject matter of the suit was made. The proposed amendment neither alters the nature of the suit nor gives a fresh cause of action. The Court below rightly allowed the subject interlocutory application, assigning reasons. There is no legal infirmity in the order under challenge and ultimately prayed to sustain the impugned order and dismiss the Civil Revision Petition.

5. In view of the above submissions of both the learned counsel, the point that arises for determination in this Civil Revision Petition is as follows:

¹ (2005) 13 Supreme Court Cases 89

“Whether the order, dated 21.11.2017, passed in I.A.No.348 of 2017 in O.S.No.31 of 2008 by the IV Additional District Judge at Warangal, is liable to be set aside and consequently, the subject I.A.No.348 of 2017 is liable to be dismissed?”

6. Admittedly, the subject suit was filed in the year 2008 and the proposed amendment was sought belatedly, i.e., in the year 2017, seeking permission to amend the schedule of the suit by prefixing the words “house along with” before the words ‘open land’ in the schedule and permit them to make consequential amendment to the schedule of the plaint. In the course of submissions, it is brought to the notice of this Court by the learned counsel for the respondent Nos.1 to 4/plaintiffs that the allegation of raising structures over the suit schedule property was made in the plaint. The proposed amendment to the schedule of the plaint neither alters the nature of the suit nor gives a fresh cause of action to deal with.

7. Here, it is appropriate to refer to the decision of the Hon’ble Apex Court in *Rajesh Kumar Aggarwal and others Vs. K.K. Modi and others*², wherein, the Hon’ble Apex Court, referring to Order VI Rule 17 of CPC, held as follows:

The object of the rule is that Courts should try the merits of the case that come before them and

² (2006) 4 SCC 385

should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side.

Order VI Rule 17 consists of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

8. Thus, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. In the instant case, the real question in controversy in the subject suit is the title set up by the respondent Nos.1 to 4 herein/plaintiffs with regard to the suit schedule property. Thus, the proposed amendment neither changes the nature of the suit nor incorporates a different cause of action. Though the subject interlocutory application is filed belatedly, it deserves to be allowed in order to settle down the disputes between the parties once for all and to avoid multiplicity of litigation. Under these circumstances, the Court below rightly allowed the subject interlocutory assigning reasons. There is nothing to take a different view. There is no legal infirmity in the order under

challenge. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

9. The facts of the case in Sajjan Kumar's case (1 supra) relied by the learned counsel for the petitioner/defendant No.2 has no relevancy to the facts of the case on hand and hence, the said decision has no application to the instant case.

10. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this CRP, shall stand dismissed.

12th February, 2020
Bvv

Dr. SHAMEEM AKTHER, J

