

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CRP NOs.2551, 2608, 2896 AND 2915 OF 2019

COMMON ORDER:

1 All these Civil Revision Petitions, under Article 227 of the Constitution of India, are filed aggrieved by the orders dated 04.09.2019 passed in I.A.Nos.803 of 2019 and 804 of 2019 in O.S.No.66 of 2014 on the file of the Judge, Family Court-cum-VII Additional District Court, Medak at Sangareddy. Since the point involved in all these Civil Revision Petitions is one and the same, all these Civil Revision Petitions are disposed of by this common order.

2 The factual matrix that led to the filing of all these Civil Revision Petitions is as follows:

3 Plaintiff is the son of the first defendant through his second wife (Smt.Suneetha). Defendant Nos.2 and 3 are son and daughter of the first defendant through his first wife (Smt. late Pushpa).

4 The plaintiff-Master B. Nandi Vardhan Reddy who is aged about 8 months, represented by his mother and natural guardian by name B. Sunitha, filed O.S.No.66 of 2014 before the trial Court, seeking a preliminary decree for partition and separate possession of the suit A to D schedule properties into four equal shares and for allotment and possession of 1/4th such share to him and for a consequential declaration that certain documents are null and void and not binding on him to the extent of his share and also to pass a final decree by appointing an advocate commissioner to divide the suit schedule A to D properties by metes and bounds into four equal shares and to put him in possession of his legitimate share.

5 While the suit is pending and at the stage issues were framed and the evidence of the plaintiff as well as the first defendant in the suit was over, one Smt. B.Venkatamma, who is the paternal grandmother of the plaintiff, filed I.A.No.804 of 2019 in the said suit under Order 1 Rule 10 (2) r/w Section 151 CPC and also under Rule 28 of Civil Rules of Practice to implead her as plaintiff No.2 in the suit. Her claim is that the plaintiff filed the suit without knowledge that she is also having 1/3rd share in the properties inherited by her father-in-law- Hanumantha Reddy and that she, out of love and affection, had gifted her undivided 1/3rd share in favour of the plaintiff under registered gift settlement deed and the same was accepted. Therefore, she is necessary and proper party to the suit. The petitioner Smt.B.Venkatamma filed another petition i.e. I.A.No.803 of 2019 under Order VI Rule 17 r/w Section 151 CPC and under Rule 28 of the Civil Rules of Practice for consequential amendments in the plaint. Both the petitions were opposed by respondent Nos.3, 9, 10 and 11 by filing separate counters.

6 The trial Court, having considered the rival contentions, observed that said Smt.B.Venkatamma, who is the wife of late B.Hanumanth Reddy, i.e. paternal grandfather of the original plaintiff, is a necessary and proper party to the suit filed by the original plaintiff, seeking partition and accordingly allowed I.A.No.804 of 2019. The trial Court by further observing that since I.A.No.804 of 2019 was allowed permitting the petitioner to come on record as plaintiff No.2, allowed the I.A.No.803 of 2019 also as the petitioner filed the petition seeking consequential amendment

in the plaint consequent to her impleading as plaintiff No.2 in the suit.

7 Aggrieved thereby, one Mr.P.Mahender Reddy, the 10th respondent in his individual capacity and also in the capacity of Director of the 9th respondent – M/s. Raja Pushpa Properties Pvt. Ltd., filed Civil Revision Petition Nos.2608 of 2019 and 2551 of 2019 respectively. Similarly, aggrieved by the very same orders, the third respondent in both the I.As by name B.Srikar Reddy filed Civil Revision Petition Nos. 2915 of 2019 and 2896 of 2019 respectively.

8 It is pertinent to note that the original plaintiff did not oppose the orders passed by the trial Court in the above two I.As.

9 Sri P.Venkat Reddy, learned counsel for the petitioners in Civil Revision Petition Nos.2608 and 2551 of 2019, contended that the first respondent herein – Smt.B.Venkatamma, having executed the gift settlement deed in favour of the plaintiff, has no *locus standi* to seek her impleadment in the suit as she has no subsisting right, title or interest over any part of the suit schedule property. He further contended that said Smt.Venkatamma filed the implead petition in collusion with the original plaintiff with a view to cover up the lacunae. Learned counsel further contended that the implead petitioner is seeking to delete the entire schedule appended to the plaint and substitute the same with her own list of properties. He further contended that the second petitioner P. Mahender Reddy representing the first petitioner M/s. Raja Pushpa Properties Private Limited, purchased the property from defendant Nos.1, 3 and 4 in the suit. D2 and D.3 are children of

D.1 born through his first wife – late Pushpa. The proposed plaintiff – Smt. Venkatamma gifted the property vide registered gift settlement deed bearing document No.23675 of 2019 dated 18.5.2019 in favour of the original plaintiff. If the applications filed by Smt. Venkatamma are dismissed no prejudice would be caused to the original plaintiff.

10 Sri V.Ramakrishna Reddy, learned counsel for the petitioners in Civil Revision Petition Nos.2915 of 2019 and 2896 of 2019, contended that the trial Court ought to have dismissed the I.As since Smt.Venkatamma i.e. the first respondent herein, is neither proper nor necessary party to the suit in view of the gift settlement deed executed by her in favour of the plaintiff in respect of the suit schedule property. He further contended that the cause of action for the first respondent herein to seek impleadment as well as consequential amendment is distinct and different from the cause of action pleaded in the suit.

11 In support of his arguments, the learned counsel relied on the following decisions:

J. Samuel and Others vs. Gattu Mahesh and Others¹

wherein the Hon'ble apex Court held at para No.16 as follows:

16. As stated earlier, in the present case, the amendment application itself was filed only on 24.09.2010 after the arguments were completed and the matter was posted for judgment on 04.10.2010. On proper interpretation of proviso to Rule 17 of Order 6, the party has to satisfy the Court that he could not have discovered that ground which was pleaded by amendment, in spite of due diligence. No doubt, Rule 17 confers power on the court to amend the pleadings at any stage of the proceedings. However, proviso restricts that power once the trial has commenced. Unless the Court satisfies that there is a reasonable cause for allowing the amendment normally the court has to reject such a request.

¹ (2012) 2 SCC 300

Ajendraprasadji N.Pandey vs. Swami Keshavprakeshdasji

N. and Others² wherein the Hon'ble apex Court held at para No.55 as follows:

55. We have carefully perused the pleadings and grounds which are raised in the amendment application preferred by the appellants at Ex. 95. No facts are pleaded nor any grounds are raised in the amendment application to even remotely contend that despite exercise of due diligence these matters could not be raised by the appellants. Under these circumstances, the case is covered by proviso to Rule 17 of Order 6 and, therefore, the relief deserves to be denied. The grant of amendment at this belated stage when deposition and evidence of three witnesses is already over as well as the documentary evidence is already tendered, coupled with the fact that the appellants' application at Exh. 64 praying for recasting of the issues having been denied and the said order never having been challenged by the appellants, the grant of the present amendment as sought for at this stage of the proceedings would cause serious prejudice to the contesting respondents, original plaintiffs and hence it is in the interest of justice that the amendment sought for be denied and the petition be dismissed.

Anthati Kondal vs. N. Laxma Reddy³ wherein this Court held at Para No.4 as follows:

4. In the absence of any reasonably-believable explanation as to how all of a sudden the petitioner herein has gained knowledge about the pendency of a civil suit, which came to be instituted in the year 2006, and all other developments that have taken therein, the assertion of defendant 9 that the present Application lacks bona fides gained strength. When the petitioner could assert that no summons were served during the lifetime of his father and that service was effected through substituted service, it will not be unreasonable to presume that the petitioner is in the know of the procedure that is normally adopted by the civil Court. If he is that much aware, as is sought to be made out from the contents of para 3 of the affidavit filed in support of I.A.No.1067 of 2014, extracted supra, the petitioner owes a clear obligation to explain to the Court as to how he has come to know of all these developments all of a sudden and moved an Application only in January, 2014.

State of Madhya Pradesh vs. Union of India and Another⁴

wherein the Hon'ble apex Court held at para No.10 as follows:

10) This Court, while considering Order VI Rule 17 of the Code, in several judgments has laid down the principles to be applicable in the case of amendment of plaint which are as follows:

(i) *Surender Kumar Sharma v. Makhan Singh*, (2009) 10 SCC 626, at para 5:

"5. As noted hereinafter, the prayer for amendment was refused by the High Court on two grounds. So far as the first ground is concerned i.e. the prayer for amendment was

² (2006) 12 SCC 1

³ 2015 (5) ALD 53

⁴ (2011) 12 SCC 268

a belated one, we are of the view that even if it was belated, then also, the question that needs to be decided is to see whether by allowing the amendment, the real controversy between the parties may be resolved. It is well settled that under Order 6 Rule 17 of the Code of Civil Procedure, wide powers and unfettered discretion have been conferred on the court to allow amendment of the pleadings to a party in such a manner and on such terms as it appears to the court just and proper. Even if, such an application for amendment of the plaint was filed belatedly, such belated amendment cannot be refused if it is found that for deciding the real controversy between the parties, it can be allowed on payment of costs. Therefore, in our view, mere delay and laches in making the application for amendment cannot be a ground to refuse the amendment."

(ii) North Eastern Railway Administration, Gorakhpur v. Bhagwan Das (dead) by LRS, (2008) 8 SCC 511, at para16:

"16. Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In Pirgonda Hongonda Patil v. Kalgonda Shidgonda Patil which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs."

(iii) Usha Devi v. Rijwan Ahamd and Others, (2008) 3 SCC 717, at para 13:

"13. Mr Bharuka, on the other hand, invited our attention to another decision of this Court in Baldev Singh v. Manohar Singh. In para 17 of the decision, it was held and observed as follows: (SCC pp. 504-05)

"17. Before we part with this order, we may also notice that proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. For this reason, we have examined the records and find that, in fact, the trial has not yet commenced. It appears from the records that the parties have yet to file their documentary evidence in the suit. From the record, it also appears that the suit was not on the verge of conclusion as found by the High Court and the trial court. That apart, commencement of trial as used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. As noted hereinbefore, parties are yet to file their documents, we do not find any reason to reject the application for amendment of the written statement in view of proviso to Order 6 Rule 17 CPC which confers wide power and unfettered discretion on the court to allow an amendment of the written statement at any stage of the proceedings."

(iv) Rajesh Kumar Aggarwal and Others v. K.K. Modi and Others, (2006) 4 SCC 385, at paras 15 & 16:

"15. The object of the rule is that the courts should try the merits of the case that come before them and 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.

16. Order 6 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."

(v) *Revajeetu Builders and Developers v. Narayanaswamy and Sons and Others*, (2009) 10 SCC 84, at para 63:

"63. On critically analysing both the English and Indian cases, 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 bona fide or mala fide;
 - (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.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive."

The above principles make it clear that Courts have ample power to allow the application for amendment of the plaint. However, it must be satisfied that the same is required in the interest of justice and for the purpose of determination of real question in controversy between the parties.

Revajeetu Builders and Developers vs. Narayanaswamy

And Sons and Others⁵ wherein the Hon'ble apex Court held at

Para Nos.57, 58 and 59 as follows:

57. In *Suraj Prakash Bhasin v. Raj Rani Bhasin & Others*²², this Court held that liberal principles which guide the exercise of discretion in allowing amendment are that multiplicity of proceedings should be avoided, that amendments which do not totally alter the character of an action should be readily granted

⁵ (2009) 10 SCC 84

while care should be taken to see that injustice and prejudice of an irremediable character are not inflicted on the opposite party under pretence of amendment, that one distinct cause of action should not be substituted for another and that the subject-matter of the suit should not be changed by amendment.

WHETHER AMENDMENT IS NECESSARY TO DECIDE REAL CONTROVERSY:

58. The first condition which must be satisfied before the amendment can be allowed by the court is whether such amendment is necessary for the determination of the real question in controversy. If that condition is not satisfied, the amendment cannot be allowed. This is the basic test which should govern the courts' discretion in grant or refusal of the amendment.

NO PREJUDICE OR INJUSTICE TO OTHER PARTY:

59. The other important condition which should govern the discretion of the Court is the potentiality of prejudice or injustice which is likely to be caused to the other side. Ordinarily, if other side is compensated by costs, then there is no injustice but in practice hardly any court grants actual costs to the opposite side. The Courts have very wide discretion in the matter of amendment of pleadings but court's powers must be exercised judiciously and with great care.

12 Heard Sri C. Hari Preeth, learned counsel for respondent No.2 and Mr. Tipparthi Venkata Reddy, learned counsel for Smt. Patlolla Nirupa Reddy the respondent No.5 in CRP Nos.2896 of 2019 and 2915 of 2019 and Respondent No.6 in CRP Nos.2551 of 2019 and 2608 of 2019. Learned counsel for the 5th respondent has submitted his arguments, while the learned counsel for the 6th respondent has adopted the same. It is the contention of Sri Tipparthi Venkata Reddy learned counsel that the proposed plaintiff No.2 is a necessary party and the partition which is the subject matter is not a partial partition. There is a necessity for amending the schedule of properties also and thus contended that the order passed by the trial Court in allowing the I.As is well considered one and further contended that no prejudice would be caused to any body if the proposed plaintiff No.2 is impleaded.

13 On the other hand, Sri C. Hari Preeth, learned counsel for the respondent Nos.1 and 2 herein contended that Venkatamma

the first respondent is none other than the paternal grandmother of the plaintiff and admittedly she was not made party to the suit though she was having a share in the suit schedule property since the entire suit schedule property is ancestral property. He further contended that amendment of pleadings can be permitted at any stage of proceedings and relied on the following judgments.

Arshnoor Singh vs. Harpal Kaur & Ors.⁶ Wherein the Hon'ble apex Court held at Para No.7.3 as follows:

“Under Mitakshara law, whenever a male ancestor inherits any property from any of his paternal ancestors upto three degrees above him, then his male legal heirs upto three degrees below him, would get an equal right as coparceners in that property.”

Mohinder Kumar Mehra vs. Roop Rani Mehra And Others⁷ wherein the Hon'ble apex Court held at para Nos.14, 17 and 28 as follows:

14. By Amendment Act 46 of 1999 with a view to shortage litigation and speed of the trial of the civil suits, Rule 17 of Order VI was omitted, which provision was restored by Amendment Act 22 of 2002 with a rider in the shape of the proviso limiting the power of amendment to a considerable extent. The object of newly inserted Rule 17 is to control filing of application for amending the pleading subsequent to commencement of trial. Not permitting amendment subsequent to commencement of the trial is with the object that when evidence is led on pleadings in a case, no new case be allowed to set up by amendments. The proviso, however, contains an exception by reserving right of the Court to grant amendment even after commencement of the trial, when it is shown that in spite of diligence, the said pleas could not be taken earlier. The object for adding proviso is to curtail delay and expedite adjudication of the cases.

17. Although Order VI Rule 17 permits amendment in the pleadings “at any stage of the proceedings”, but a limitation has been engrafted by means of Proviso to the fact that no application for amendment shall be allowed after the trial is commenced. Reserving the Court's jurisdiction to order for permitting the party to amend pleading on being satisfied that in spite of due diligence the parties could not have raised the matter before the commencement of trial. In a suit when trial commences? Order XVIII of the C.P.C. deal with “Hearing of the Suit and Examination of Witnesses”. Issues are framed under Order XIV. At the first hearing of the suit, the Court after reading the plaint and written statement and after examination under Rule 1 of Order XIV is to frame issues. Order XV deals with “Disposal of the Suit at the first hearing”, when it appears that the parties are not in issue of any question of law or a fact. After issues are framed and case is

⁶ 2019 AIR (SC) 3098

⁷ (2018) 2 SCC 132

fixed for hearing and the party having right to begin is to produce his evidence, the trial of suit commences.

28. While considering the prayer of amendment of the pleadings by a party, this Court in the case of Mahila Ramkali Devi & Ors. Vs. Nandram (Dead) through Legal Representatives & Ors., (2015) 13 SCC 132 has again reiterated the basic principles, which are to be kept in mind while considering such applications in Paragraphs 20, 21 and 22, which is quoted as below:-

“20. It is well settled that rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost.

21. In our view, since the appellant sought amendment in Para 3 of the original plaint, the High Court ought not to have rejected the application.

22. In *Jai Jai Ram Manohar Lal v. National Building Material Supply* [(1969) 1 SCC 869], this Court held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.”

Rameshkumar Agarwal vs. Rajmala Exports Private

Limited⁸ wherein the Hon’ble apex Court held at para Nos.20 and 21 as follows:

20. *In Revajeetu Builders & Developers vs. Narayanaswamy & Sons & Ors. (2009) 10 SCC 84*, this Court once again considered the scope of amendment of pleadings. In paragraph 63, it concluded as follows:

"Factors to be taken into consideration while dealing with applications for amendments

63. On critically analysing both the English and Indian cases, 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 bona fide or mala fide;

(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

⁸ (2012) 5 SCC 337

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.

These are some of the important factors which may be kept in mind while dealing with application filed under Order 6 Rule 17. These are only illustrative and not exhaustive."

11) It is clear that while deciding the application for amendment ordinarily the Court must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide and dishonest amendments. The purpose and object of Order VI Rule 17 of the Code is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. Amendment cannot be claimed as a matter of right and under all circumstances, but the Courts while deciding such prayers should not adopt a hyper-technical approach. Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs. Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations.

K. Bhaskar Rao vs. K.A. Rama Rao⁹ this Court held at para

No.22 held as follows:

22. While the stand of the plaintiff before the trial Court was that it was not necessary, as the sisters were already married and given sufficient share at the time of marriage, in this appeal the appellant has filed an application CMP No.2141 of 2005 to implead the sisters as parties. In view of the stand of the plaintiff that no share need to go to them and in spite of pointing out that their presence is necessary in the suit, the plaintiff has chosen not to implead them. The defect of non-joinder of necessary parties being fatal, the same cannot be cured by impleading them in appeal. The trial Court, therefore, rightly held that the suit is liable to be dismissed on the ground of non-joinder of necessary parties.....

Abdul Rehman and another vs. Mohd. Ruldu and others¹⁰

wherein the Hon'ble apex Court held at para Nos.7, 8, 10 and 15 as follows:

7. It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

8. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being 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. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has

⁹ 2010 (6) ALT 109

¹⁰ 2013 (1) ALD (SC)

to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and 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. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in *J. Samuel and Others vs. Gattu Mahesh and Others*, (2012) 2 SCC 300 and *Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. and Others*, (2012) 5 SCC 337. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment.

10. Next, we have to see whether the proposed amendments would alter the claim/cause of action of the plaintiffs. In view of the same, we verified the averments in the un-amended plaint. As rightly pointed out by Ms. Manmeet Arora, learned counsel for the appellants that the entire factual matrix for the relief sought for under the proposed amendment had already been set out in the un-amended plaint. We are satisfied that the challenge to the voidness of those sale deeds was implicit in the factual matrix set out in the un-amended plaint and, therefore, the relief of cancellation of sale deeds as sought by amendment does not change the nature of the suit as alleged. It is settled law that if necessary factual basis for amendment is already contained in the plaint, the relief sought on the said basis would not change the nature of the suit. In view of the same, the contrary view expressed by the trial Court and High Court cannot be sustained. It is not in dispute that the relief sought by way of amendment by the appellants could also be claimed by them by way of a separate suit on the date of filing of the application. Considering the date of the sale deeds and the date on which the application was filed for amendment of the plaint, we are satisfied that the reliefs claimed are not barred in law and no prejudice should have been caused to respondent Nos. 1-3 (defendant Nos. 1-3 therein) if the amendments were allowed and would in fact avoid multiplicity of litigation.

15. We reiterate that all amendments which are necessary for the purpose of determining the real questions in controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties.

Smt. Eda Mary vs. Smt. Yedla Elzebeth Rani¹¹ wherein

the common High Court for the State of Telangana and the State of Andhra Pradesh held at para Nos.18, 19 and 20 as follows:

18. This Court on an examination of what is argued and the record available clearly notices that there is absolutely no proof to show that the widow of David Raju got remarried and there is no proof filed to show that consequent on her remarriage she has lost her rights in the property. There is no basis for the findings of the trial Court Judge on these matters. The wife of David Raju is a necessary and proper party to the proceedings. She has a share in

¹¹ 2019 (1) ALT 273

her husband's estate. A decree cannot be passed without her presence. The copy of the written arguments filed shows that this issue was squarely raised in the submissions. The issue framed includes a point about the share of this widow. The lower Court simply ignored the same. This Court holds that the suit is bad for non-joinder of the necessary party as a widow who has a share was not added as a party.

19. In addition, this Court also notices that another important item of property, which admittedly belongs to the family, has not been added. Thus, this Court agrees with the submissions of the learned counsel for the appellants that while the present suit is vehemently contested for property measuring the Ac.1.25 cents an equally large and important property measuring Ac.1.00 cents has not been deliberately added.

20. A suit for partial partition does not lie is a settled law. The decision of the Hon'ble Supreme Court of India in *Kenchegowda (Deceased) by Legal representatives v. Siddegowda* (3) (1994) 4 SCC 294 which held that a suit for partial partition in the absence of other co-sharers is not warranted in law is clearly applicable here. This is a rule based on equity and also convenience. Inclusion of all items will not only bring a quietus to the litigation but also help in equitable adjustments / distribution of assets; facilitates the taking of accounts for *mesne profits* etc. This rule is meant to prevent multiplicity of proceedings which would arise if separate suits are filed for partition of different parts of a joint property or joint family property. This Court therefore holds that the non inclusion of another item of property and the failure to add the widow of David Raju are fatal defects to the suit.

14 It is an admitted fact that as on date, issues were framed and the evidence of original plaintiff and first defendant was over. At this stage, the above two I.As were filed, one for impleadment and another for consequential amendment in plaint seeking to amend pleadings and also schedule of properties. The trial Court allowed both the I.As.

15 For the purpose of deciding the core issue involved in these cases, this Court feels it apposite to extract Order I Rule 10 CPC and Order VI Rule 17 of CPC, which read as under:

Order I Rule 10 CPC:

10. Suit in name of wrong plaintiff.-

(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the court may at any stage of the suit, if satisfied that the Suit has been instituted through a bone fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the court thinks just.

(2) Court may strike out or add parties—The court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

(3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent.

(4) Where defendant added, plaint to be amended—Where a defendant is added, the plaint shall, unless the court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the court thinks fit, on the original defendant.

(5) Subject to the provisions of the Indian Limitation Act, 1877 (15 of 1877), section 22, the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons

Order VI Rule 17 CPC:

17. Amendment of Pleadings.- 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.

16 The case of Smt.Venkatamma, the proposed implead petitioner, is that the original plaintiff filed the suit without her knowledge and that she is also having 1/3rd share in the properties. Her claim is that all the properties shown in the schedule were inherited through her father-in-law B.Hanumanth Reddy. After the demise of said Hanumantha Reddy, all the properties were devolved upon her husband – Venkat Reddy. Smt.Venkatamma and Venkat Reddy begot a son by name Ranga Reddy, who is the father of the plaintiff. Plaintiff is the son of said Ranga Reddy, through his second wife-Smt.Suneetha. Ranga Reddy begot a son and a daughter through his first wife-late

Smt.Pushpa. The case of Smt.Venkatamma is that she, along with Ranga Reddy, begot another son by name B. Kista Reddy (died) and one daughter by name Smt. P.Nirupa – the 4th defendant in the suit. In fact, the 4th respondent is sailing with the plaintiff.

17 Further, there is no dispute from any of the parties to the suit that the entire suit schedule properties are not ancestral properties. So also there is no dispute about the status of the petitioner-B.Venkatamma, being the paternal grandmother of the original plaintiff. In such a situation the Court has to see the *bona fides* of the parties who seek impleadment in a pending suit that too after long lapse of five years of the suit being instituted. In the case on hand, the suit is of the year 2014 and the implead petition is filed in the year 2019. Undisputedly Smt.Venkatamma is the paternal grandmother of the plaintiff. So she being the head of the family must have knowledge about the family affairs and also about the institution of the suit. More over the plaintiff is being represented by his mother, who is none other than the daughter-in-law of Smt.Venkatamma. So also the plaintiff arrayed the father of the plaintiff as well as his paternal uncles and aunt as defendants. So the contention of Smt.Venkatamma that she is not aware of the institution of the suit is incongruous. Moreover, Smt.Venkatamma herself admitted that she bequeathed her 1/3rd share of property in favour of the plaintiff and the same was accepted by the plaintiff. If so, she has no subsisting right in the subject property as she had bequeathed it. Then her *locus standi*, to the suit is in controversy, as rightly contended by Sri V.Ramakrishna Reddy, learned counsel for the revision petitioners. The contention of Smt.Venkatamma that she has no knowledge for

all these five years is not tenable even for argument sake, because, in the present case, issues were framed and evidence on the side of plaintiff as well as first defendant were over. So, having slept for five long years and allowed the suit to cross the above said stages, and having bequeathed her 1/3rd share in favour of the plaintiff, Smt.Venkatamma is estopped from taking such a plea. In the absence of any reasonably believable explanation regarding treating her as necessary party and as to how all of a sudden Smt.Venkatamma has gained knowledge about the pendency of a civil suit, which came to be instituted in the year 2014, and all other developments that have taken therein, the assertion of the contesting defendants that the present application lacks bona fides, gained strength. So on the ground of *bona fides*, the trial Court ought to have rejected the plea of the proposed implead party petitioner – Smt.Venkatamma.

18 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases supra, I.A.No.804 of 2019 is liable to be dismissed.

19 Coming to I.A.No.803 of 2019, the petition filed for consequential amendments, in addition to the properties already mentioned by the original plaintiff, Smt.Venkatamma seeks to bring some other properties for partition. It is needless to say that a third party to the suit, without being impleaded, cannot seek partition of different properties from that of the properties sought by the original plaintiff. It is nothing but changing the very nature of the prayer of the suit. In such circumstances, if Smt.Venkatamma has any grievance, she is at liberty to file a fresh suit, but cannot seek partition of different properties of her choice

in another suit wherein she is not impleaded. In the present case, for the reasons best known to the original plaintiff, he did not oppose the petition filed by Smt.Venkatamma.

20 No doubt, Rule 17 of Order VI CPC confers power on the Court to amend the pleadings at any stage of the proceedings. However, proviso restricts that power, once the trial has commenced. Unless the Court satisfies that there is a reasonable cause for allowing the amendment normally the court has to reject such a request.

21 Taking the totality of the circumstances into account, this Court is of the view that the relief sought for by Smt.Venkatamma in I.A.No.803 of 2019 is ancillary to the prayer sought for in I.A.No.804 of 2019. When I.A.No.804 of 2019 for impleadment itself is not permissible, the question of granting ancillary relief in I.A.No.803 of 2019 does not arise and, therefore, the relief deserves to be denied.

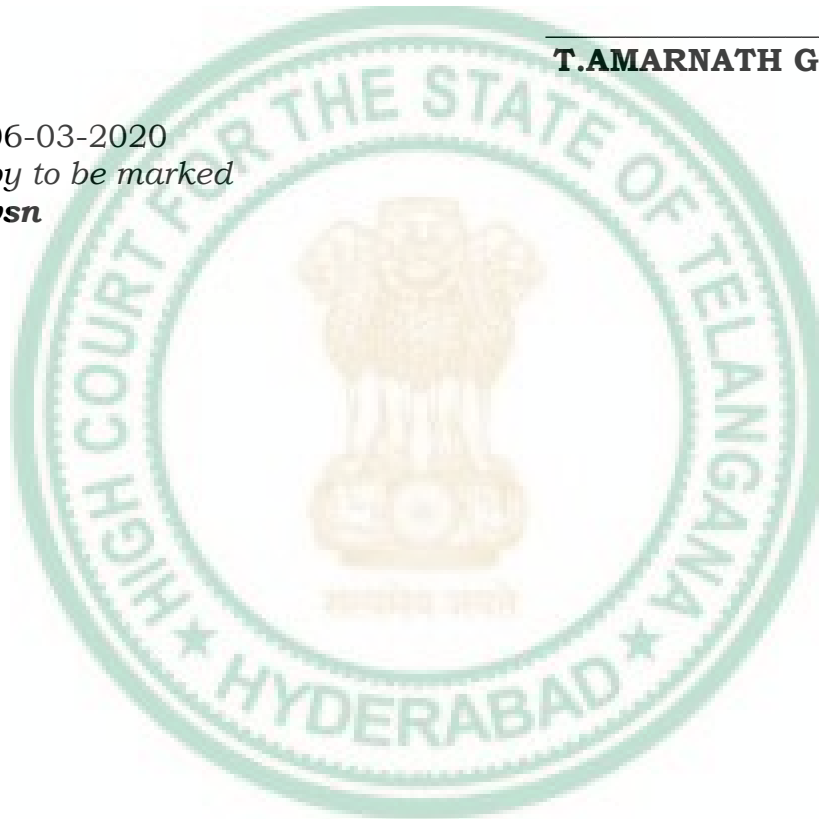
22 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, this Court is of the view that when grant of impleadment in the circumstances narrated above and at this belated stage when evidence of material witnesses on both sides is already over as well as the documentary evidence is already tendered, is liable to be dismissed, the grant of present amendment as sought for at this stage of the proceedings would cause serious prejudice to the contesting respondents and hence it is in the interest of justice that the amendment sought for be denied.

23 In the result, all the Civil Revision Petitions are allowed. The orders dated 04.09.2019 passed in I.A.Nos.803 of 2019 and 804 of 2019 in O.S.No.66 of 2014 on the file of the Judge, Family Court-cum-VII Additional District Court, Medak at Sangareddy are hereby set aside. Consequently I.A.Nos.803 of 2019 and 804 of 2019 are hereby dismissed. No order as to costs.

24 Miscellaneous petitions, if any, pending in these Civil Revision Petitions, shall stand closed.

T.AMARNATH GOUD, J.

Date: 06-03-2020
L.R.copy to be marked
B/o **Kvsn**



* THE HON'BLE SRI JUSTICE T. AMRNATH GOUD

+ CIVIL REVISION PETITION Nos.2551 & 2608 OF 2019

% 06.03.2020

M/s. Raja Pushpa Properties Pvt Ltd & Anr.

Petitioners

VERSUS

\$ Smt. B.Venkatamma & Others.

Respondents

Counsel for Petitioners : Sri P.Venkat Reddy

Counsel for the respondents : **Sri T. Venkat Reddy for R.6**
Sri C. Hari Preeth for R.1 and R.2
Sri K. Venkata Narasimha Reddy for R.3

+ CIVIL REVISION PETITION Nos.2896 & 2915 OF 2019

B. Srikar Reddy

Petitioner

VERSUS

\$ Smt. B.Venkatamma & Others.

Respondents

Counsel for Petitioner : Sri V.Ramakrishna Reddy

Counsel for the respondents : Sri T. Venkat Reddy for R.6
Sri C. Hari Preeth for R.1 and R.2
Sri K. Venkata Narasimha Reddy for R.3

<GIST:

> HEAD NOTE:

? Cases referred

- 1 (2012) 2 SCC 300
- 2 (2006) 12 SCC 1
- 3 2015 (5) ALD 53
- 4 (2011) 12 SCC 268
- 5 (2009) 10 SCC 84
- 6 2019 AIR (SC) 3098
- 7 (2018) 2 SCC 132
- 8 (2012) 5 SCC 337
- 9 2010 (6) ALT 109
- 10 2013 (1) ALD (SC)
- 11 2019 (1) ALT 273