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A.No.7980 of 2018
in C.S.No.497 of 2015

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Reserved on : 24.11.2021

Pronounced on : 22.12.2021

N.SESHASAYEE,J.

The 3rd defendant in a suit for partition has come forward with this application for amending the counter claim raised by him. This Court was informed that the suit is laid for partition of the estate left behind by a certain M.A.Varghese and his wife.

2. The plaintiffs and the three defendants are the children of late N.A.Varghese. He is stated to have possessed extensive properties in Pondicherry, Kerala, and also in Tamil Nadu. In the written statement filed by the 3rd defendant, he has raised a plea contending that some of the properties which are available for partition were not included in the plaint and seeks partition of those properties as well.

3. The present application is filed for amending the counter claim on the



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allegation that late M.A.Varghese and the first defendant, who is one of his sons, share the same name, that the senior Varghese had died in 2001 and long thereafter during the pendency of the suit, on 08.01.2018, the first defendant has executed a settlement deed in favour of the 1st plaintiff pertaining to one of the properties which is neither covered in the suit nor in the counter claim of the applicant. According to the applicant, the first defendant has posed himself as their father in executing this document.

4. The applicant now seeks to introduce the Paragraph Nos. 22 (A) and 22 (B) for making it part of the pleadings. He also wants to bring in this property as an additional property in the counter claim and seeks partition of the same.

5.1 Learned counsel for the plaintiffs / respondent 1 & 2 submits that the applicant/3rd defendant has earlier filed C.S.No.436 of 2015 wherein the property he claimed 1/3 share and later he has come out with contradictory stand in the counter claim wherein he initially sought only 1/5th share and now by virtue of proposed amendment he seeks 73.08 %. Learned counsel proceeded to argue that the entire application lacks *bona fide*. He relied on



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the ratio in ***Revajeetu Builders and Developers Vs. Narayanaswamy and others*** [(2009) 10 SCC 84] (Paragraph Nos.60 and 63) and ***Bollepanda P. Poonacha and another Vs. K.M.Madapa*** [(2008) 13 SCC 179] Paragraph No. 15.

5.2 It is not in dispute that the suit is laid for partition, nor is there a dispute that the defendants have filed their written statement wherein the applicant has raised a counter claim. Now, an amendment is sought only to the counter claim based on certain facts, which according to the third defendant, have come to his knowledge since the filing of his counter claim. Indeed, he alleges that the first defendant in the suit shared the same name as his father, and this is made use of by both the first plaintiff and the first defendant for creating some documents. In ***Revajeetu Builders and Developers Vs. Narayanaswamy and others*** [(2009) 10 SCC 84], the Hon'ble Supreme Court has made a broad statement as to the factors which the Court might reckon while considering an application for amendment of pleadings. This is now extracted:

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(1) *whether the amendment sought is imperative for propert and*



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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 the 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."

6. If the above said dictum of the Hon'ble Supreme Court is taken as a guideline while considering the prayer for amendment of pleadings, then it must be said that the present prayer for amending the counter claim hardly deserves to be rejected.

7. In the end, this application is allowed. The applicant is required to carry



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out amendment to the his counter claim within two weeks from today after
excluding the Christmas Holidays.

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ds

Pre-delivery Order in
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22.12.2021