

2. In view of the above state of affairs, I have heard both these matters together and at the request of the parties, finally.

3. The respondent has filed a suit for possession of the suit property. By moving application Exhibit-47, he sought to amend the plaint so as to include the averments regarding some obstruction allegedly created during pendency of the suit and for perpetual injunction commensurate with such obstruction. The trial Court allowed the application by order under challenge in Writ Petition No. 12485/2018.

4. Respondent again sought to amend the plaint so as to correct description of the suit property, which is allowed by the order under challenge in Writ Petition No. 2848/2022.

5. Learned advocate Mr. Dixit for the petitioners would vehemently submit that both these applications for amendment were filed after the issues were framed. In view of the proviso to Order 6 Rule 17 of the Code of Civil Procedure, no special ground or sufficient cause was pleaded in the applications for amendment. The Supreme Court in the matter of Vidyabai and others vs. Padmalatha and another reported in **(2009) 2 Supreme Court Cases 409**, has held that the date of framing of issues is the date of commencement of the trial. It was imperative for the respondent to come out with sufficient

cause so as to bring his case within the limits prescribed.

6. Mr. Dixit would submit that the suit was filed way back in the year 2011 and the applications for amendment were moved after enormous delay. The cause of action for making a prayer for injunction as mentioned in the proposed amendment was the starting point of limitation. The proposed amendment seeking to insert relief of perpetual injunction was, therefore, time barred and should not have been allowed to be incorporated.

7. Mr. Dixit would submit that it is a suit for declaration and in rview of Section 34 of the Specific Relief Act, since no consequential relief was being claimed, a lacuna was sought to be filled in by seeking to add the relief of perpetual injunction. Mr. Dixit would thereafter rely upon the decision in the matter of Revajeetu Builders and Developers vs. Narayanaswamy and Sons and others reported in **2009(77) ALR 654**, and would submit that the parameters laid down by the Hon'ble Supreme Court while considering the application for amendment have been overlooked by the trial Court.

8. Mr. Dixit would submit that even the subsequent

amendment which was sought to be made touching the description of the suit property has been sought belatedly. The incorrectness of the description of the suit property, which otherwise would have gone to the root of the maintainability of the suit, has been sought to be rectified and should not have been permitted.

9. Learned advocate Mr. Kulkarni for the respondent would point out that the submission that the suit is for declaration itself is incorrect. It is a suit for possession. Though the applications have been filed belatedly, the evidence was still to commence and only issues were framed. He would further submit that the cause of action for claiming perpetual injunction is a continuous cause and merely because the respondent had sought to amend the plaint so as to include it belatedly, still the relief would continue to be within limitation.

10. Mr. Kulkarni would then submit that the description of the suit property was incorrect. Admittedly, respondent had purchased the suit property and the incorrect description was merely sought to be rectified in terms of the description given in the sale-deed. Since he purchased the suit property from the petitioners, the

petitioners should not object to the correction of the description since they are very much alive to the description of the property sold by them.

11. Lastly, Mr. Kulkarni would submit that infact, so far as the earlier amendment is concerned, even before filing the writ petition challenging the order, the petitioners had filed additional written statement in response to the proposed amendment that was already effected.

12. I have considered the rival submissions, perused the orders as also decision cited at bar.

13. To begin with, it is a suit for possession and not a suit for declaration so that any impediment as contemplated under Section 34 of the Specific Relief Act could crop up. Apart from the fact that no such stand has ever been taken by the petitioners either in the written statement or even in the reply filed to the application (Exhibit 47) seeking amendment to the plaint, it cannot be said that the proposed amendment seeking injunction is an attempt at filling some lacuna.

14. So far as the aspect of limitation is concerned, though it is a matter of fact that according to the proposed amendment the alleged obstruction had taken place on 04.12.2012 and the respondent could have sought the amendment at some earlier point of time, since it is a relief of injunction, the cause of action would be in perpetuity so long as the obstruction continues.

15. As far as the second amendment is concerned, it merely intends to correct the description of the suit property in tune with the description given in the sale-deed under which the petitioners had sold the suit property to the respondent. The parties are alive as to in respect of which property the dispute is. Consequently, incorrect description given in the plaint should not prevent the respondent from seeking its correction, may be after so many years. No prejudice is likely to be caused to the petitioners.

16. Apart from the above state of affairs, as is pointed out by the learned advocate for the respondent, even before challenging the order by which the earlier amendment was permitted to be carried out, the petitioners had filed additional written statement after it was duly carried out.

17. Since it is a suit of the respondent for possession, any delay at any stage of the litigation would prevent him from getting the relief. The petitioners cannot be said to have been put to any prejudice or hardship merely because the amendments have been sought belatedly.

18. In my considered view, even applying the parameters laid down in the case of Revajeetu (supra), the trial Court has not erred in allowing the amendments to be carried out. There is no perversity or illegality in the orders. Both the writ petitions are dismissed.

19. The observations made herein above are confined to the decision of the writ petitions and the trial Court shall be free to decide all the issues.

(MANGESH S. PATIL)
Judge