

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

CIVIL REVISION PETITION NO: 3189 OF 2023

Petition filed Under Article 227 of Constitution of India, aggrieved by the order dated 14-09-2023 IN I.A.No.555 of 2023 in O.S.No.1198 of 2022 on the file of the Court of the II Additional Senior Civil Judge at Kushaiguda, Medchal-Malkajgiri District.

Between:

1. Jonna Srinivas Reddy, S/o Buchi Reddy, Age: 44 years, Occ: Pvt. Employee, R/o. H.No.5733, Garnet Medow Road Knightdale, NC, USA-27545 Represented by his GPA holder J.Buchi Reddy, S/o J.Nagi Reddy, Age: 71 years, Occ: Retd.Employee, R/o. H.No.8-51/5, Dwarakanagar Colony Boduppal, Hyderabad.
2. Kumbam Tirumal Reddy, S/o Kumbam Linga Reddy, Age: 53 years, Occ: Business, R/o. Pandenapalle, Eduluru, Kattangur (M), Nalgonda District.

...Petitioner/Petitioner

AND

1. J. Sudha, D/o Y.Ram Reddy, Age: 40 years, Occ: Employee, R/ o. 1-1-30/122, Kapra, ECIL G.R.Reddy Nagar, R.R.Dist Presently residing at 1401, Carrington park circle Apt.108, Morrisville NC, 27560, USA.
2. Kumbam Tirumal Reddy, S/o Kumbam Linga Reddy, Age: 53 years, Occ: Business, R/o. Pandenapalle, Eduluru, Kattangur (M), Nalgonda District.
3. K.Venkat Papi Reddy, S/o K.Linga Reddy, Age: 67 years, Occ: Advocate, R/o. Plot No.17, Road no.2, Chandrapuri Colony, L.B.Nagar, Ranga Reddy District.

...Respondents

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to permit the petitioner and GPA Holder to represent this CRP.No of 2023 on behalf of the petitioner.

IA NO: 2 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in O.S.No.1198/2022 on the file of the II Additional Senior Civil Judge, Medchal-Malkajgiri District, at Kushaiguda pending the disposal of the C.R.P.

Counsel for the Petitioners: Sri. VENUGOPAL JULAKANTI

Counsel for the Respondent No.2: Sri. V.M. KRISHNA REDDY

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

CIVIL REVISION PETITION No. 3189 of 2023

ORDER:

This Civil Revision Petition is filed aggrieved by the order dated 14.09.2023 in I.A. No.555 of 2023 in O.S. No.1198 of 2022 (Old O.S. No.1361 of 2016) by the II Additional Senior Civil Judge, at Kushaiguda, Medchal Malkajgiri District, as being illegal and contrary to settled principles of law.

2. Heard Sri. Venugopal Julakanti, learned counsel for the petitioner and Sri V.M.Krishna Reddy, learned counsel for 2nd respondent, and perused the record.

3. The petitioner No.1 herein is the plaintiff in the suit filed for partition, separate possession and consequential injunction. The respondent No.1 herein who is the wife of the petitioner is the defendant No.1 in the said suit.

4. The suit was originally instituted in the year 2016 and the respondent Nos.2 & 3 herein had filed their written statements in 2019. While the suit stands posted for plaintiff's evidence, the petitioner herein had preferred an application under Order VI Rule

17 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') proposing to add the following paragraph in the body of the plaint:

"Para No.10. It is submitted that after 2.12.15 when the defendant no.1 left the company of the plaintiff, the plaintiff requested her to partition the suit scheduled property orally but she refused. After that without informing the plaintiff the defendant no.1 sold the property by appointing defendant no.3 as her GPA holder and executed a sale deed in favour of defendant no.2. Subsequently, the plaintiff got issued a letter through his attorney on 4-8-16 to partition the suit schedule property but the defendant no.1 bluntly refused."

Along with the above paragraph the following paragraph is proposed to be added as 'Cause of Action' in the plaint:

"Cause of Action: The cause of action arose on 2012, the plaintiff and the defendant no.1 planned to purchase the property and transferred the amount in the name Mr. Naveen Reddy who is the brother of the plaintiff. The land lords executed agreement of sale in favour of Mr. Naveen Reddy. After execution of agreement of sale, the plaintiff and defendant no.1 sent \$ 39,891 from 27-3-12 to 24-4-12 and executed sale deed in favour of defendant no.1 by N. Gangamma, P. Sunitha, Anitha Elizebeth vide document no. 1274/2013 dt. 13-13-13. After that on 2-12-15 when the defendant no.1 left the company of the plaintiff and on 4-8-16 when the plaintiff issued a letter for distribution of properties for which the defendant no.1 refused. When prior to issue of letter dt. 4-8-14 when the defendant no. 1 executed registered sale deed in favour of defendant no.2 on 3-2-16 by appointing defendant no. 3 as her GPA and when the defendant no.3 presented the document before SRO, Uppal and they registered the document vide no. 5060/2016 dt. 3-2-16."

The respondent No.2 herein filed his counter opposing the proposed amendments.

5. The Court below after hearing both sides, while dismissing the said interlocutory application had observed that the only reason given by the petitioner herein for not including the cause of action in the original plaint was due to oversight, and that the same was insufficient to allow an amendment after the commencement of trial. Aggrieved by the same, the present revision is preferred.

6. It is contended by the petitioner that, the contents of the proposed amendments are already forming part of the pleadings as can be seen from the plaint averments and that failure to include 'cause of action' was due to oversight. It is further contended that if the petitioner is not allowed to carry out the proposed amendments he would be put to irreparable loss.

7. I have taken note of the contentions urged.

8. Order VI Rule 17 of the Code stipulates that an application for amendment can be allowed at any stage of the proceedings for the purpose of deciding the real disputes between the parties. However, the same is subject to the proviso to Rule 17 which casts an obligation on the applicant to show that the application could

not have been preferred before the commencement of trial despite exercising due diligence.

9. At this stage, it is pertinent to refer to the decision in *Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Ors*¹, wherein the Supreme Court had postulated the important factors to consider while dealing with an application for amendment as under:

“FACTORS TO BE TAKEN INTO CONSIDERATION WHILE DEALING WITH APPLICATIONS FOR AMENDMENTS:

67. On critically analyzing 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.

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

...

¹ (2009)10SCC84

70. We can conclude our discussion by observing that while deciding applications for amendments the courts must not refuse bona fide, legitimate, honest and necessary amendments and should never permit mala fide, worthless and/or dishonest amendments.”

10. At the outset it is to be seen that by the proposed amendment the petitioner herein is only seeking to add the cause of action paragraph which would clearly state the date from which the petitioner's right to sue had accrued. Further, the contents of the said paragraphs have specifically been pleaded in para 5 of the plaint. Therefore, this Court is of the view that no new case is being introduced by the petitioner.

11. However, considering that the petitioner herein had stated 'oversight' as the reason for cause of delay and further considering that the suit is at the stage of plaintiff evidence, this Court is of the view the prejudice caused to the respondents herein by virtue of allowing the present amendment can be compensated with costs.

12. Accordingly, the Civil Revision Petition partly allowed. The order dated 14.09.2023 in I.A. No.555 of 2023 in O.S. No.1198 of 2022 (Old O.S. No.1361 of 2016) by the II Additional Senior Civil Judge, at Kushaiguda, Medchal Malkajgiri District is set – aside

subject to payment of Rs.10,000/- as costs to the respondents herein.

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

**SD/- MOHD. ISMAIL
ASSISTANT REGISTRAR**

//TRUE COPY//



SECTION OFFICER

To,

1. The II Additional Senior Civil Judge at Kushaiguda, Medchal-Malkajgiri District
2. One CC to SRI. VENUGOPAL JULAKANTI Advocate [OPUC]
3. One CC to SRI. V.M. KRISHNA REDDY, Advocate [OPUC]
4. Two CD Copies

PSR
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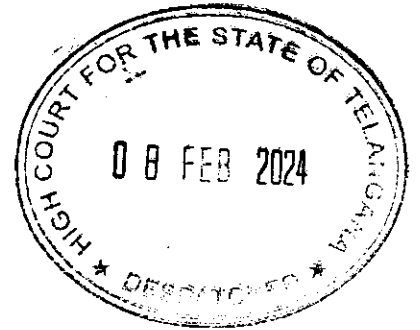


HIGH COURT

DATED:29/12/2023

ORDER

CRP.No.3189 of 2023



ALLOWING OF THE CIVIL REVISION PETITION.

⑥ VW
8/2/24