

HON'BLE SRI JUSTICE A.SANTHOSH REDDY

C.R.P.Nos.4660 and 4649 of 2018

COMMON ORDER:

CRP.No.4660 of 2018 is filed to set aside the order dated 31.07.2018 in I.A.No.1004 of 2018 in I.A.No.1005 of 2018 in O.S.No.44 of 2017 on the file of the Principal Junior Civil Judge, Janagoan.

CRP.No.4649 of 2018 is filed to set aside the order dated 31.07.2018 in I.A.No.1004 of 2018 in I.A.No.1005 of 2018 in O.S.No.44 of 2017 on the file of the Principal Junior Civil Judge, Jangoan.

2. Since both revisions arise out of the same suit, they are being heard together and disposed of by way of common order.

3. The petitioners-plaintiffs filed suit in O.S.No.44 of 2017 for specific performance of agreement of sale, dated 02.05.2004 against the respondents-defendants. The said suit is coming-up for arguments. While so, the petitioners filed the applications in I.A.Nos.1004 and 1005 of 2018 under Section 151 of the Code of Civil Procedure, 1908 (for short "C.P.C.") and under Order VI Rule 17 of the C.P.C. respectively, to reopen the matter seeking for amendment of the plaint as sought in the application. The respondents resisted the applications stating that the suit is coming-up for arguments. At that stage, if the petitioners are permitted

to amend the plaint as sought for, the proposed amendment would change the nature of the suit and there are no valid grounds to allow the applications.

4. On consideration of the material on record, the trial Court dismissed both the applications vide common order dated 31.07.2018. Aggrieved by the said order, the present revisions are preferred.

5. I have heard the submissions of the learned counsel for the petitioners and learned counsel for respondent Nos.1, 2, 5 and 8. Perused the record.

6. Order VI Rule 17 of C.P.C. as it now exists is as follows:-

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.

7. In **Mohinder Kumar Mehra v. Roop Rani Mehr¹**, the Apex Court at para No.14 and 17 held as under:

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

¹ 1 (2018) 2 Supreme Court Cases 132

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

8. The Apex Court in **Ajendraprasadji N.Pande v. Swami**

Keshavprakeshdasji², at para No.57 held as under:

57. The above averment, in our opinion, does not satisfy the requirement of Order VI Rule 17 without giving the particulars which would satisfy the requirement of law that the matters now sought to be introduced by the amendment could not have been raised earlier in respect of due diligence. As held by this Court in *Kailash vs. Nankhu & Ors.* (2005) 4 SCC 480), the trial is deemed to commence when the issues are settled and the case is set down for recording of evidence.

9. A perusal of the record would disclose that the suit is coming-up for arguments and at that stage, the petitioners filed the present applications to re-open the suit to enable them to file the amendment application

² AIR 2007 Supreme Court 806

under Order VI Rule 17 of the C.P.C. The proposed amendment is that the suit schedule property is situated at Mushtiyala Revenue, by oversight, it was shown as Veerannapet village, and therefore, it has to be amended in the plaint as sought for in the application. The documents filed by the petitioners i.e. Ex.A.1 agreement of the sale also contain the name of Veerannapet village. In the chief examination affidavit filed by the petitioners also, they pleaded that the property agreed to be sold under the agreement of sale dated 02.05.2004 is situated at Veerannapet Village. Apart from that, in the entire plaint pleadings, it is mentioned that the name of Veerannapet Village only. The petitioners have not stated any other reason except stating that they have noticed the said mistake and by oversight, they mentioned the village name as Veerannapet Village, instead of Mushtiyala Revenue village.

10. The present suit was filed in the year 2017 and the impugned applications were filed on 23.07.2018. The contention of the petitioners that for the first time at the stage of arguments, they have noticed the above mistake appears to be not believable. They have come up with the present applications after lapse of nine years of filing of the suit, that too, when the matter is posted for arguments.

11. The trial Court has rightly took a view that after concluding the evidence on both sides and when the suit is posted for arguments, the

present applications were filed. The said aspect itself establishes that there is no due diligence on the part of the petitioners. There are no merits in the applications filed by the petitioners and on the said grounds, the applications were dismissed.

12. After considering the facts and circumstances of the case, I am of the view that the petitioners did not raise any tenable grounds to accept that inspite of due diligence, they failed to file the application for the proposed amendment, which clearly invents a new cause of action. The proviso to Order 6 Rule 17 of C.P.C. is added with a view to shorten the delays and not to encourage the litigants who are either not diligent or who want to indulge in vexatious litigation for prolonging the suit proceedings.

13. For the foregoing reasons, I do not find any justifiable reasons to interfere with the impugned order.

14. Accordingly, the Civil Revision Petitions are dismissed. Miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

A.SANTHOSH REDDY, J

04.01.2023

Nvl

