

APHC010092272020



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3560]

TUESDAY, THE SIXTH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA

CIVIL REVISION PETITION NO: 588/2020

Between:

1. NIDIGANTI MALLIKARJUNA RAO, S/O. LATE NAVANEETHAM NAIDU, AGED ABOUT 68 YEARS, PROPERTY HOLDER, R/O. CHENDODU VILLAGE, KOTA MANDAL, SPSR NELLORE DISTRICT.

...PETITIONER

AND

1. KULLURU LEELAVATHAMMA, W/O. PULLAIAH, HINDU, AGED ABOUT 70 YEARS, R/O, CHENDODU VILLAGE, KOTA MANDAL, SPSR NELLORE DISTRICT.
2. PENUBALLI LAKSHMI, W/O. SASIDHAR, HINDU, AGED ABOUT 38 YEARS, R/O. D.NO, 3-22/1A, NO.11, VENKATESWARA COLONY ROAD, SAROORNAGAR, RANGAREDDY DISTRICT, HYDERABAD - 35.
3. AMULURU VIJAY KUMAR, S/O. LATE RAMA SUBBAIAH, HINDU, AGED ABOUT 58 YEARS, RIO. 8-3-809 TO 812, PRIYA NIVAS, FLAT NO. 301, YELLAREDDYGUDA, HYDERABAD - 73.
4. PALACHURU SURYANARAYANA RAO, S/O. LATE ALLEIAH, HINDU, AGED ABOUT 53 YEARS, R/O. D.NO. 8/164, BAZAR STREET, EAST GUDUR, GUDUR TOWN, SPSR NELLORE DISTRICT.

...RESPONDENT(S):

Petition under Article 227 of the Constitution of India, praying that in the circumstances stated in the grounds filed herein, the High Court may be pleased to set aside the Order and Decretal Order dated 19-02-2020 in

I.A.No. 496/2019 in O.S.No. 81/2011 on the file of the Hon'ble Senior Civil Judge, Gudur, SPSR Nellore District and pass

IA NO: 1 OF 2020

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. 81/2011 on the file of the Hon'ble Senior Civil Judge, Gudur, SPSR Nellore District pending disposal of the present Civil Revision Petition and pass

Counsel for the Petitioner:

1.K PALLAVI

Counsel for the Respondent(S):

1.M V J K KUMAR

The Court made the following:

THE HONOURABLE SRI JUSTICE SUBHENDU SAMANTA**CIVIL REVISION PETITION NO: 588 of 2020****ORDER:**

1. The instant Civil Revision Petition has been preferred against the Order dated 19.02.2020 passed by the learned Senior Civil Judge, Gudur in I.A.No.496 of 2019 arising out of O.S.No.82 of 2011. The learned Court Below has rejected an application under Order VI Rule 17 C.P.C where the Petitioner/ Plaintiff tried to amend plaint.

2. The brief facts of the matter is that:

The petitioner being the plaintiff filed a suit for declaration of settlement deed dated 03.11.2009 as null and void. The settlement deed was executed in favour of the 1st respondent/ 1st defendant. The suit was contested by the defendant by filing Written Statement. Issues are framed. Thereafter, the suit was proceeded in the Trial. After conclusion of the trial, the matter was posted for arguments. At the stage, the petitioner/plaintiff filed application for amendment.

3. The brief facts of the amendment is that the plaintiff intends to seek a declaration of his title by the strength of a will executed by his brother namely Nidiganti Narayanarao.

4. The learned Court Below after hearing the parties has passed Impugned Order. The learned Court Below has opined that the proposed amendment sought for by the petitioner/plaintiff is a legal plea. If the petitioner is entitled to get a decree in respect of Settlement Deed in question to be null and void, automatically, he would be entitled to the plaint schedule property; for such legal plea, the amendment is not required.

5. The learned Court Below has also opined that he has not asked the relief for Declaration over the plaint schedule property before commencement of trial on the basis of will at the stage of argument he cannot seek such relief.

6. The learned counsel for the Petitioner submits that though the Specific Declaration was not sought for by the plaintiff but the plaintiff has properly described his right title and interest over the suit schedule property which was devolved upon petitioner/plaintiff by way of will. He further submits that by seeking amendment, in introducing a new paragraph, the plaintiff has not tried to introduce new fact; no new prayer has been made there under. He submits that by such proposed amendment the nature and character of the suit would not be changed, and it is formal in nature.

7. She further submits that the learned Court Below has specifically stated that there is a legal plea which can be amended. She further submits that during framing of the issues, the learned Court Below has specifically framed one issue as to whether the will dated 09.03.1992 is true valid and binding on the defendant.

8. The learned counsel appearing on behalf of the respondent submits that the Impugned Order passed by the learned Court below suffers no illegality. During the entire proceedings of the suit, the petitioner/plaintiff has not asked for any relief for declaration of plaint schedule property on the basis of will. Now at the stage of argument, the proposed amendment has been placed. He further submits that the Hon'ble Supreme Court has deprecated the practice of the parties to seek amendment after initiation of trial.

9. The learned counsel for the respondent has also submits that according to provisions of Order VI Rule 17 of C.P.C, the Court cannot permit amendment after commencement of trial unless the parties seeking amendment has shown reasons and due diligence to justify that before initiation of trial, he could not file the amendment.

10. Learned counsel for the respondent further submits that the learned Court Below has specifically opined that it is a legal plea for which amendment is not required. The petitioner/plaintiff, if entitled to get the decree by the operation of law they would get the title of the suit property for which no amendment is required to be asked.

11. Learned counsel for the respondent further submits that there is no illegality or impropriety of impugned order. Thus, the Civil Revision Petition has no merit to entertain. Learned counsel for the respondent further argued that there is long delay for taking steps to amend the plaint, thus, the same cannot be allowed.

12. In support of his contention, he cited a decision of Hon'ble Bombay High Court reported in **Sushila Gopal Tejale Vs Babanbai Sakharam Chandramore and Ors.**

28. Keeping in view of the aforesaid backdrop, the legality, propriety and correctness of the impugned order is required to be evaluated. It is trite all amendments which are necessary for the determination of real question in controversy between the parties are required to be allowed, unless the proposed amendment has the propensity to cause irretrievable prejudice to the adversary. The considerations like the proposed amendment would completely alter the nature and character of the suit, the relief sought to be claimed by way of proposed amendment is barred by law of limitation, the proposed amendment, if permitted, would embrace the trial, are few of the important factors, which also weigh in the exercise of the jurisdiction.

29. The stage at which the amendment is sought assumes significance, where the case is covered by the proviso to Order VI Rule 17 of the Code. The proviso envisages that, the Court shall not allow an application for amendment after the trial had commenced unless it comes to the conclusion that, in spite of due diligence, the party seeking the amendment could not have raised the matter before the commencement of the trial. In a sense, the element of due diligence and satisfaction by the Court about its existence, is a jurisdictional condition to permit the amendment in the pleadings after the commencement of the trial.

30. Ordinarily, mere delay in seeking amendment in the pleading, by itself, cannot be the sole ground on which the application for amendment can be rejected. However, where the proviso to Order VI Rule 17 of the Code comes into play, the jurisdictional fact needs to be satisfied. Unless the jurisdictional fact, as envisaged by the proviso to Order VI Rule 17 is satisfied, the Court will have no jurisdiction at all to allow the amendment in the pleadings, post the commencement of the trial. ([Vidyabai and Ors](#) (Supra).

33. On the aforesaid touchstone, if the averments in the Application for amendment in the Plaint are appraised, the only reason which can be discerned from the Application is that the Plaintiff intends to bring on record events which have transpired after the institution of the Suit and that would facilitate the adjudication of the dispute effectively. The Court does not find any explanation much less a satisfactory one as to why the amendment was not sought by the Plaintiff before the commencement of the trial in the Suit. By the proposed amendment the Plaintiff intends to bring on record the factum of execution of the Power of Attorney by the Defendants-Executants in favour of the third party and the registration of the CR No. 190 of 2015 by Defendant No.13 against Defendant Nos. 2 to 5. No effort was made by the Plaintiff to show to satisfy the test of due diligence by ascribing reasons and circumstances for not seeking the amendment before the commencement of the trial.

13. Refuting the contention of the learned counsel for the respondent, the petitioner in his reply submits that the Single Bench of Telangana and Andhra

Pradesh High Court has discussed the issue regarding the delay in amending the plaint in ***Dhulipalla Srinivasa Rao Vs Kandula Govardhana Rao*** reported in 2018 (2) ALD 315 as follows:-

14. The next aspect to be dealt with is whether such an amendment of plaint ought for cannot be permitted on the and of delay? Dealing with the aspect of delay in seeking the amendment, it is to noted that in ***Sampath Kumar v. Ayyakannu, 2002 (6) ALD 63 (SC) = (2002) 7 SCC 559***, the facts disclose that the trial Court had rejected the application for amendment of pleadings on the ground of delay and the Madras High Court while dismissing the revision had confirmed the said order of the trial Court. However, the Supreme Court while setting aside the Orders of the said two Courts and permitting the amendment of the plaint, which was sought for about 11 years from the date of institution of the suit, had held as follows:

In the present case, the amendment is being sought for almost 11 years after the date of the institution of the suit. The plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are pleaded in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits, it would be a sound exercise of discretion to permit the relief of declaration of title and recovery of possession being sought for in the pending suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the pendency of the suit. The merits of the averments sought to be incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. Therefore, on the ground of mere delay, however long it may be, an application for amendment cannot be rejected provided the facts of the case warrant allowing of the amendment.

15. Dealing next with the aspect that the relief of declaration of title now being sought to be introduced by way of the proposed amendment is barred by law of limitation and the submission of the learned Counsel for the 2nd defendant that the period of limitation for seeking declaration of title is 3 years as per the provision of the Article 58 of the Indian Limitation Act, what is to be noted is that issue of limitation is blend of fact and law and is not a pure question of law. This question need not detain this Court for long as in ***Pankaja v. Yellappa (supra)***, the Supreme Court while holding that though the plaint is initially filed for permanent injunction there is no bar for permitting the amendment of the plaint to seek the relief of declaration of title in respect of plaint schedule property, had set aside the order of the trial Court rejecting the application seeking for amendment as confirmed by the High Court and had permitted the amendment holding inter alia that the question - whether or not the suit seeking the relief of declaration is barred by limitation' can be gone into in the main suit. Further, in the decision in ***M. Chokka Rao v. Sattu Sattamma, 2006 (1) ALD 116***, this Court having exhaustively dealt with provisions of law under the Indian Limitation Act and the relevant precedents had laid down that when the suit is not for a simple declaration but is for a declaration coupled with further relief, the limitation is 12 years but not 3 years and that Article 58 is not applicable to such suits. While the learned Counsel for the 2nd defendant pleaded that under Entry 58 of the Schedule to the Limitation Act, the declaration sought for by the 1st respondent/ plaintiff in this case ought to have been done within 3 years when the right to sue first accrued, the plaintiff contends that the same does not fall under the said Entry but falls under Entry 64 or 65 of the said Schedule of the Limitation Act, which provides for a limitation of 12 years. Therefore, according to the plaintiff the prayer for declaration of title is not barred by limitation. Be that as it may, as already noted, the issue of limitation will have to be gone into by the trial Court at an appropriate stage in the main suit, it being a mixed question of fact and law. As a result, in the well considered opinion of this Court, on the ground of limitation, the application seeking amendment of the plaint is not liable for rejection as in the case on hand, the trial Court has to consider at an appropriate later stage the aspect whether suit for declaration seeking further relief is governed by Article 58 or Articles 64 and 65 of the Indian Limitation Act.

14. Heard the learned counsel for the parties. Perusal of observation of the learned Trial Court as well as the observation of Hon'ble Bomby High Court as well as Single Bench of Telangana and Andhra Pradesh High Court. It appears from the peculiar facts and circumstances of this case that the plaintiff filed suit seeking relief for a declaration in respect of settlement deed dated 03.01.2009 as null and void. It appears from the plaint that the plaintiff averred his title over the suit schedule property by virtue of a will executed by one his brother namely Nidiganti Narayanarao dated 09.03.1992. In the prayer of original plaint, it appears that the plaintiff sought for prayer for declaration of registered settlement deed dated 03.01.2009 to be illegal invalid and not binding on the plaintiff. The defendant by placing written statement has specifically averred that they are entitled over suit schedule property by virtue of settlement deed dated 03.01.2009 the defendants also challenged the will dated 09.03.1992. By virtue of the set out pleadings, the learned Court below has framed issues. It appears that issue No.02 was framed as to whether will dated 09.03.1992 executed by Nidiganti Narayanarao in favour of plaintiff is true and valid.

15. After conclusion of trail, the suit was posted for arguments. Now the plaintiff sought for amendment in respect of a paragraph of the plaint where in he specifically pleaded regarding his title over the suit schedule property by way of will and also made certain amendment in the para of suit valuation as well new prayer was made regarding the declaration of his title by virtue of will.

16. It is the contention of petitioner that by such amendment nature and character of the suit shall not be changed. It is the plea of learned counsel for the respondent that application was filed in a belated stage, no amendment can be allowed after commencement of trail unless the parties seeking amendment has shown sufficient reasons that inspite of due diligence he could not take proper steps for amending the plaint before initiation of trail.

17. The matter before learned single judge of Bombay High Court in ***Sushila Gopal Tejale Vs Babanbai Sakharam Chandramore and Ors*** the fact was otherwise different in the suit there was a direction by the Hon'ble High Court for expeditious hearing. In the suit the plaintiff has not properly taken steps regarding the cross examination of defendant witnesses. Moreover, at the stage of arguments, the plaintiff filed the proposed amendment to introduce some subsequent event, thereby deciding the issue before him the learned single bench of Bombay High Court has observed that the stage of amendment has been specified under Order VI Rule 17 of C.P.C. The learned Bombay High Court has also observed that the parties seeking amendment could not satisfy that inspite of due diligence, the parties could not introduce amendment before commencement of the trail.

18. In ***Dhulipalla Srinivasa Rao Vs Kandula Govardhana Rao reported in 2018 (2) ALD 315***, the Hon'ble single Judge of Telangana and Andhra Pradesh High Court at Hyderabad has allowed the amendment which was filed after 11 years from the date of Institution of the suit. The Hon'ble Telangana High Court has adopted view of the Hon'ble Supreme Court in ***Sampath Kumar v. Ayyakannu, 2002 (6) ALD 63 (SC) = (2002) 7 SCC 559***.

19. In this particular facts and circumstances of this case, it appears that the learned court below is quite justified that the proposed amendment which the plaintiff intends to introduce is a legal plea, which he otherwise automatically have, if he became successful to get the decree of declaration. It is also apparent from the pleadings of the parties that the execution of will in favour of plaintiff and factum thereof is not a new one, it was already there in the pleadings of plaintiff and defendant. The factum of the will is so relevant in the suit, the learned Court below has framed issue on the point.

20. Admittedly, as per view of the amendment of C.P.C in the year 2002 the legislature has adopted that there should not be delay in Civil litigation due to delay filing of amendment of plaint, thereby the provision under Order VI Rule 17 of C.P.C was amended and the party seeking amendment are duty bound

to show that inspite of due diligence he could not introduce the amendment before commencement of trial.

21. In the Judgment of Hon'ble Supreme Court in ***Sampath Kumar v. Ayyakannu, 2002 (6) ALD 63 (SC) = (2002) 7 SCC 559***, it is specifically held that if the amendment is required for the purpose of introducing new facts and plea such amendment should not be allowed. Moreover, amendment so introduce it taken away any right of the defendant that should not be allowed. If, any amendment change the nature and character of the suit such amendment cannot be allowed. Generally the amendment after initiation of the trial is not allowed. If the party seeking amendment prove or satisfied the learned court below that inspite of due diligence he could not proper steps to amend the plaint.

22 In this particular case, on plain perusal of the plaintiff prayer in the original plaint, it appears that the plaintiff has not sought for any declaration of his right over the suit schedule property. Though the plaintiff has specifically pleaded that he has got right, title over the suit schedule property by virtue of the will dated 09.03.1992. If, I considered the impugned order passed by the learned Court below, it appears that the learned court below has properly assess the issue that if the plaintiff successful in the suit and after the settlement deed dated 03.11.2009 being declared null and void, the suit property will automatically devolve upon the plaintiff by operation of law. In my view the learned court below though have over sight the matter but failed to understand the issue, that if plaintiff become successful in the suit then also he has to file a separate suit for seeking declaration of title which was already to be decided by the Court in the instant Suit.

23. Furthermore, it appears that though the proposed amendment was filed after commencement of the trial but the proposed amendment shall not change the nature and character of the suit. More specifically the Court, if want to decide the issue before him regarding the fact that whether settlement deed in question dated 03.11.2009 is to be declared as null and void, he has

to decide plaintiff's right title interest over the suit schedule property. If, the learned Court below is not allowed the proposed amendment the multiplicity of proceedings would be cropped up. The reasons thereby the plaintiff has to file separate suit for declaration. Thus in my view though the proposed amendment which was filed after the completion of evidence of the parties as it is not at all the changing of nature and character of the suit to prevent multiplicity of proceedings and to sub serve substantive justice, at this stage amendment can be allowed.

24. Moreover, the learned Court Below has already framed one issue regarding the will which was pending and tried to introduce as a prayer in the plaint. In my view to avoid the multiplicity of proceeding and for interest of justice, the proposed amendment should be allowed. Accordingly, I find justification to entertain the instant Civil Revision Petition. The impugned order passed by the learned Court below is hereby set aside, the proposed amendment application filed by the petitioner is hereby allowed.

25. The petitioner is directed to amend the plaint according to the application in I.A.No.496 of 2019 by filing amendment plaint within the stipulated period as envisaged in provisions of law; thereby the respondent/defendant is at liberty to file additional written statement before the Court against the amended pleading. The learned court below shall dispose of the suit on the basis of pleadings and proof of the parties as early as possible more preferably within eight (08) weeks from the date of passing of the Order.

26. In the result, the Civil Revision Petition is allowed, without costs.

The interim orders, if any, granted earlier, shall stand vacated.

Consequently, pending miscellaneous applications, if any, shall stand closed.

JUSTICE SUBHENDU SAMANTA