



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE NINTH DAY OF MAY
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE DR JUSTICE K MANMADHA RAO
CIVIL REVISION PETITION NO: 1183 OF 2019

Between:

1. VEDALA ANTARVEDI @ ANTARVEDI NARASIMHACHARYULU S/o.
Late Ramanujacharyulu, aged about 70 years, Cultivation, Peddavaram,
Nagaram Mandal, Guntur District.

...PETITIONER(S)

AND:

1. KOMATI LAKSHMI ANDAL SAI RANI W/o. Venkateswarlu, aged about
63 years, R/o.D.No. 6-149, Manikonda Village, Vunguturu Mandal,
Krishna District.
2. Inkollu Srinivasa Trilochan S/o. Veerababu aged about 41 years,
Employment, Rio. D.No.64-8-10/2 Surya Park View, Patamatalanka,
Vijayawada, Krishna District.

...RESPONDENTS

Counsel for the Petitioner(s): SIVALENKA RAMACHANDRA PRASAD

Counsel for the Respondents: K V G M KRISHNA RAO

The Court made the following: ORDER



HON'BLE DR. JUSTICE K. MANMADHA RAO

**CIVIL REVISION PETITION No.1183, 1184, 1185, 1186,
1187 and 1188 of 2019**

COMMON ORDER :

As the issue involved in all these civil revision petitions is one and the same, they are being taken up for hearing as well as disposed of by way of this Common Order.

2. Heard Mr. Sivalenka Ramachandra Prasad, learned counsel appearing for the petitioners and Mr. K.V.G. M. Krishna Rao, Sri P. Prabhakar Rao and Sri Venkata Durga Rao.A., learned counsels appearing for the respondents.

3. Since the facts in all the civil revision petitions are similar and identical, therefore CRP No.1183 of 2019 is taken as lead case, and the facts therein hereinafter will be referred to for convenience.

4. The facts of the case are that the father of the petitioner by name Vedala Ramanujacharyulu died intestate on 10.10.1967. During his lifetime, his father bequeathed a Will on 25.7.1948 and a Gift deed dated 06.06.1953. His



mother by name Vedala Seshamma died on 26.12.2009. His step mother Vedala Andallamma executed a Will dated 20.04.1966 during her lifetime and later died on 26.05.1967. Thus the properties of his father, mother and step mother devolved upon him as per the said documents. It is further stated that the plaint schedule property is part and parcel of the above said properties. It is stated that one of the sisters of the petitioner by name Nanduri Vijaya Lakshmi in collusion with other sisters got filed a suit in O.S.No.89 of 2010 on the file of the trial Court, for partition with false documents and with false averments. Thus, his sisters sold some properties belong to the petitioner with false recitals, false averments and false documents. Then the petitioner got filed suits against his sisters vide O.S No.147 of 2012, O.S No.149 of 2012, O.S No.150 of 2012, O.S No.148 of 2012, O.S No.191 of 2012 and O.S No.32 of 2012 before the trial Court. Prior to filing of the suits, he tried to ascertain the originals of Will dated 25.7.1948 bequeathed by his father, gift deed dated 6.6.1953 executed by his father and Will dated 20.04.1966 bequeathed by his step mother. But due to his best efforts to ascertain the



above said documents in originals they were not traced out and also he did not mention about the above documents in his plaint by mistake. Hence the present impugned I.A has been filed before the trial Court and the same was dismissed. Challenging the same, the revision petition came to be filed.

5. The counter affidavits are filed in all these matters, for convenience, the averments in counter in C.R.P.No.1183 of 2019 are stated as under:

In the counter affidavit filed by the 1st respondent, the respondents have denied all the averments made in the petition and contended that the proposed amendment in plaint is for giving the explanation of why he could not file those original documents of Ex.A1, Ex.A2 and Ex.A3 before the Court already they were marked. As afterthought after filing of his chief examination the petitioner/plaintiff to an intention for fill-up lacuna in his pleadings and also in his evidence he filed this petition for seeking amendment of his plaint. The proposed amendment averments are all not true and correct and concocted for the purpose in support of his pleadings. Hence, prayed to dismiss the revision petition.



6. The 2nd respondent also filed counter in the said CRP while reiterating the averments made in the counter filed by the 1st respondent, contended that the proposed amendments sought to the plaint are facts alleging that he has knowledge about the same prior to filing of the suit in OS No.148 of 2012 but he filed written statement in OS No.89 of 2010 which was filed by the 1st defendant. Thereafter, the petitioner/plaintiff filed suits in O.S No.147 of 2012, 149 of 2012 and 150 of 2012 on the file of trial court and also O.S.No.191 of 2012 and 32 of 2012 on the file of Principal Junior Civil Judge, Repalle. It is further stated that the petitioner/plaintiff falsely contended that he has no knowledge about the originals of said documents and proposed amendments to the suit sought in the present application which cannot be permitted under law. The petitioner could not be allowed to amend the plaint under proposed amendments at this stage. Hence prayed to dismiss the civil revision petition.

7. On hearing, this Court observed that it is clear that the proposed pleadings are not completely clarificatory amendments, they are not the result of subsequent events,



the said written copies were not traced out after filing of the present plaint, the proposed amendments are not technical amendments and does not come under exceptional cases. Moreover the proposed amendments even touches the cause of action and with the said pleadings, petitioner tried to introduce new pleadings to substantiate his evidence. The proposed amendment is not merely adding few new facts supporting the cause of action, but introducing written documents and new cause of action. As objected by the respondent petitioner failed to show his exercise of due diligence for not making proposed amendments at the time of filing of plaint, further prior to commencement of trial and till date of filing of present petition.

8. It is further observed that the father of the petitioner/ plaintiff died intestate on 10.10.1967 and during his life time, the said Ramanujacharryulu bequeathed a Will on 25.07.1948 in a sound and disposing state of mind and a Gift Deed dated 06.06.1953. The mother of the petitioner Vedala Seshamma died in the year 26.12.2009. The step mother of the plaintiff Vedala Andallamma executed a Will dated 20.04.1966 during her lifetime and later died on



26.05.1967. Thus the properties of father, mother and step mother of the petitioner devolved upon the petitioner/plaintiff as per the said documents. The plaint schedule property is part and parcel of the same.

9. By reason of the Civil Procedure Code (Amendment) Act 2002 (Act 22 of 2002) the Parliament inter alia inserted a proviso to **Order VI Rule 17 of the Code**, which reads as under:

“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.”

10. This Court also noticed **Salem Advocate Bar Association v. Union of India**¹, wherein the Hon'ble Apex Court held that :

42. It is to be noted that the provisions of Order 6 Rule 17 CPC have been substantially amended by the CPC (Amendment) Act, 2002.

43. Under the proviso no application for amendment shall be allowed after the trial has commenced, unless in spite of due diligence, the matter could not be raised before the commencement of trial. It is submitted, that after the trial of the case has commenced, no application of pleading shall be allowed

¹ (2005) 6 SCC 344



unless the above requirement is satisfied. The amendment Order 6 Rule 17 was due to the recommendation of the Law Commission since Order (sic Rule) 17, as it existed prior to the amendment, was invoked by parties interested in delaying the trial. That to shorten the litigation and speed up disposal of suits, amendment was made by the amending Act, 1999 deleting Rule 17 from the Code. This evoked much controversy/hesitation all over the country and also leading to boycott of courts and, therefore, by the Civil Procedure Code (Amendment) Act 2002, provision has been restored by recognizing the power of the court to grant amendment, however, with certain limitation which is contained in the new proviso added to the rule. .”

11. The ratio in *Kailash* (supra) was reiterated stating that the trial is deemed to commence when the issues are settled and the case is set down for recording of evidence.

12. It is the primal duty of the court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed.

13. It is pertinent to mention here that, **Order VI Rule 17 of the CPC** grants permission to the parties to the case to amend their pleadings at any stage of the proceedings. The proviso under this rule says that after the



trial has commenced, an application for amendment shall not be allowed.

14. It is well settled that the court must be extremely liberal in granting the prayer for amendment, if the court is of the view that if such amendment is not allowed, a party, who has prayed for such an amendment, shall suffer irreparable loss and injury. It is also equally well settled that there is no absolute rule that in every case where a relief is barred because of limitation, amendment should not be allowed. It is always open to the Court to allow an amendment if it is of the view that allowing of an amendment shall really sub-serve the ultimate cause of justice and avoid further litigation.

15. It would be useful to also notice the observations of this Court in, **PirgondaHongonda Patil v. KalgondaShidgonda Patil & 2 Ors.**², , wherein this Court considered an objection to the amendment on the ground that the same amounted to a new case and a new cause of action. In this case, this Court laid down the principles which would govern the exercise of discretion as to whether

² 1957 SCR 595 : AIR 1957 SC 363



the court ought to permit an amendment of the pleadings or not.

16. This Court approved the observations of **Batchelor, J., in the case of Kisandas Rupchand & Anr. v. Rachappa Vithoba Shilwant and Ors**³. Wherein the High Court laid down the principles thus:

“23. This Court has repeatedly held that the power to allow an amendment is undoubtedly wide and may be appropriately exercised at any stage in the interests of justice, notwithstanding the law of limitation.”

17. In a case of **SouthKonkan Distilleries & Anr. v. Prabhakar Gajanan Naik &Ors**.⁴, it was held that :

25. The principles applicable to the amendments of the plaint are equally applicable to the amendments of the written statements. The courts are more generous in allowing the amendment of the written statement as question of prejudice is less likely to operate in that event. The defendant has a right to take alternative plea in defense which, however, is subject to an exception that by the proposed amendment other side should not be subjected to injustice and that any admission made in favor of the plaintiff is not withdrawn. All amendments of the pleadings should be allowed which are necessary for determination of the real controversies in the suit provided the proposed amendment does not alter or substitute a new cause of action on the basis of which the original lis was raised or defense taken. Inconsistent and

³ ILR (1909) 33 Bom 644,

⁴ (2008) 14 SCC 632



contradictory allegations in negation to the admitted position of facts or mutually destructive allegations of facts should not be allowed to be incorporated by means of amendment to the pleadings. The proposed amendment should not cause such prejudice to the other side which cannot be compensated by costs. No amendment should be allowed which amounts to or relates in defeating a legal right accruing to the opposite party on account of lapse of time. The delay in filing the application for amendment of the pleadings should be properly compensated by costs and error or mistake which, if not fraudulent, should not be made a ground for rejecting the application for amendment of plaint or written statement.

18. But undoubtedly, every case and every application for amendment has to be tested in the applicable facts and circumstances of the case. As the proposed amendment of the pleadings amounts to only a different or an additional approach to the same facts, this Court has repeatedly laid down the principle that such an amendment would be allowed even after the expiry of statutory period of limitation.

In this behalf, in **A.K. Gupta & Sons Ltd. v. Damodar Valley Corporation**,⁵ this Court held thus:

“7.a new case or a new cause of action particularly when a suit on the new case or cause of action is barred: Weldon v.

⁵ AIR 1967 SC 96 :(1966) 1 SCR 796



Neale⁶. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation:.....”

19. In **Pankaja&Anr. v. Yellappa (dead) by lrs. &Ors.**⁷, wherein, this Court held that

30. From the above, therefore, one of the cardinal principles of law in allowing or rejecting an application for amendment of the pleading is that the courts generally, as a rule, decline to allow amendments, if a fresh suit on the amended claim would be barred by limitation on the date of filing of the application. But that would be a factor to be taken into account in the exercise of the discretion as to whether the amendment should be ordered, and does not affect the power of the court to order it, if that is required in the interest of justice.

31. x x xxxx

32. x xx xxx

33. xxxx xx.

(ii) All amendments are to be allowed which are necessary for determining the real question in controversy provided it does not cause injustice or prejudice to the other side. This is mandatory, as is apparent from the use of the word “shall”, in the latter part of Order VI Rule 17 of the CPC.

(iii) xxx xxx

(i) if the amendment is required for effective and proper adjudication of the controversy between the parties, and

(ii) to avoid multiplicity of proceedings, provided

⁶ 19 QBD 394

⁷ (2004) 6 SCC 415



- (a) the amendment does not result in injustice to the other side,
- (b) xxxx xx

20. In a case of **Vijay Gupta v. Gagninder Kr. Gandhi & Ors.**⁸, wherein it was held that :

....

....

(viii) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint.

(ix) Delay in applying for amendment alone is not a ground to disallow the prayer. Where the aspect of delay is arguable, the prayer for amendment could be allowed and the issue of limitation framed separately for decision

(x) Where the amendment changes the nature of the suit or the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint, the amendment must be disallowed. Where, however, the amendment sought is only with respect to the relief in the plaint, and is predicated on facts which are already pleaded in the plaint, ordinarily the amendment is required to be allowed.

(xi) Where the amendment is sought before commencement of trial, the court is required to be liberal in its approach. The court is required to bear in mind the fact that the opposite party would have a chance to meet the case set up in amendment. As such, where the amendment does not result in irreparable prejudice to the opposite party, or divest the opposite party of an advantage which it had secured as a result of an admission by the party seeking amendment, the amendment is required to be allowed.

Equally, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.

⁸ 2022 SCC OnLine Del 189



21. As seen from the material on record, the trial court held that it is clear that the pleadings are not completely clarificatory amendments, they are not the result of subsequent events, the said written copies were not traced out after filing of the present written statement, proposed amendments are not technical amendments and does not comes under exceptional cases. Moreover proposed amendments even touches basic case of defendants and with the said pleadings, the petitioner tried to introduce new pleadings to substantiate his evidence. Further it is observed that, Ex.A1 to Ex.A3 were marked as secondary evidence on behalf of the petitioner/PW.1 while the matter has come up for cross-examination of PW.1. At this stage, the petitioner/PW.1 has filed petition under Order VI Rule 17 CPC for considering the amendment as sought for mentioning detailed description of Ex.A1 to Ex.A3.

22. It is pertinent to mention here that insofar as CRP No.1185 of 2019, the petitioner herein is the 1st defendant in O.S No.89 of 2010. He preferred I.A. for amendment in



written statement by adding paras 19A to 19C. It is also noticed that in other suits in other CRPs i.e., CRP No.1183, 1184, 1186, 1187 and 1188 of 2019, Ex.A1 to Ex.A3 were marked, but whereas, in CRP No.1185 of 2019 those documents were marked as Ex.D1 to Ex.D3 on behalf of the petitioner/1st defendant and also sought for amendment of written statement by adding paras 19A to 19C. It is observed that the trial Court went on deciding the Interlocutory Applications and without considering the material facts and submissions made by the petitioners herein. Further, it is observed that, where the amendment is necessary for the court to effectively adjudicate on the main issues in controversy between the parties, the amendment should be allowed.

23. Having regard to the facts and circumstances of case and on hearing the submissions made by both the counsels and the principles laid down in the above judgments, it is noticed that 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. The proviso, to some extent, curtails absolute discretion to



allow amendment at any stage. Therefore, only a formal order of allowing amendment was required, which would not have caused any prejudice to the party. It is also well settled that the amendment applications are to be liberally considered and unless any prejudice is shown to be caused to the other party, the applications are to be allowed.

24. In view of the foregoing discussion, all the Civil Revision Petitions are allowed. The impugned orders in all the revision petitions are hereby set aside and remand back the matters to the trial Court. Basing on the above observations, the trial Court is directed to dispose of the I.As afresh, within a period of three (03) months from the date of receipt of a copy of this order. Further, since the suits in all these revision petitions are pertain to the year 2012, the trial Court is directed to dispose of the above suits as expeditiously as possible preferably within six (06) months from the date of receipt of a copy of this order.

As a sequel, all the pending miscellaneous applications shall stand closed.

DR. K. MANMADHA RAO, J.

Date : 09-05-2023

Note: L R Copy to be marked



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HON'BLE DR. JUSTICE K. MANMADHA RAO

**CIVIL REVISION PETITION No.1183, 1184, 1185, 1186,
1187 and 1188 of 2019**

Date : 09 .05.2023



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