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APHC010227442023



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3333]
(Special Original Jurisdiction)**

THURSDAY, THE EIGHTH DAY OF JANUARY
TWO THOUSAND AND TWENTY SIX

**PRESENT
THE HONOURABLE SMT JUSTICE V.SUJATHA**

**CIVIL REVISION PETITION Nos.1358, 1357 and
1359 of 2023**

CIVIL REVISION PETITION NO: 1358/2023

Between:

1. GUNDLA GOVINDA RAJULU, S/O LATE PATTABHIRAMAIAH NAIDU, HINDU, AGED 65 YEARS, OCC. BUSINESS, R/O VARADHA NAGAR, GUDUR TOWN, SPSR NELLORE DISTRICT.
2. GUNDLA KODANDAPANI,, S/O LATE PATTABHIRAMAIAH NAIDU, HINDU. AGED 60 YEARS, OCC. BUSINESS, R/O D.NO.8/151, NARAYANAMMA STREET. GUDUR TOWN, SPSR NELLORE DISTRICT.

...PETITIONER(S)

AND

1. PEDDISETTY SRINIVASA KUMAR, S/O JITHENDRANATH BABU, HINDU, AGED ABOUT 44 YEARS.
2. PEDDISETTY GOVINDA RAJA PANKAJ MALICK, S/O JITHENDRANATH BABU, HINDU, AGED ABOUT 39 YEARS, R/O D.NO.25/2/834, REVENUE COLONY, SHIROMANI NAGAR, NELLORE TOWN. SPSR NELLORE DISTRICT.
3. PEDDISETTY SWAROOPA RANI, D/O LATE PEDDISETTY MALLIKARJUNA RAO, HINDU, AGED ABOUT 70 YEARS, OCC. BUSINESS R/O SHANTHINAGAR, NEAR KASTHURI DEVI SCHOOL, NELLORE, SPSR NELLORE DISTRICT.
4. PEDDISETTY BANSALI BABU, S/O LATE PEDDISETTY MALLIKARJUNA RAO, HINDU, AGED ABOUT 67 YEARS,

OCC. BUSINESS R/O SHANTHINAGAR, NEAR KASTHURI DEVI SCHOOL, NELLORE, SPSR NELLORE DISTRICT.

5. PEDDISETTY VISHNUPRIYA RANI, D/O LATE PEDDISETTY MALLIKARJUNA RAO, HINDU, AGED ABOUT 60 YEARS, OCC. BUSINESS R/O SHANTHINAGAR, NEAR KASTHURI DEVI SCHOOL, NELLORE, SPSR NELLORE DISTRICT.
6. PEDDISETTY GOVINDA RAJA RAM PANKAJ MALLICK, S/O LATE PEDDISETTY MALLIKARJUNA RAO, HINDU, AGED ABOUT 55 YEARS, OCC. BUSINESS R/O SHANTHINAGAR, NEAR KASTHURI DEVI SCHOOL, NELLORE, SPSR NELLORE DISTRICT.
7. MANCHALA DEVIKA RANI, W/O RAMACHANDRA RAO, HINDU, AGED ABOUT 68 YEARS, OCC. DOCTOR, R/O TADEPALLIGUDEM TOWN, WEST GODAVARI DISTRICT.
8. GADAMSETTY RATHNAIAH, S/O LATE VENKATA SUBBAIAH, HINDU, AGED ABOUT 45 YEARS, D.NO.13/5, KUMMARI VEEDHI, EAST GUDUR TOWN, GUDUR MANDAL, 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 please to allow this Civil Revision Petition by setting aside the order dated 10.3.2023 passed in I.A.No.373/2022 in O.S.No.227/2014 on the file of the Court of the VII Additional District Judge, Gudur, SPSR Nellore District to secure the ends of justice and to pass

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 grant stay of all proceedings in O.S.No.227/2014 on the file of the Court of the VII Additional District Judge, Gudur, SPSR Nellore District pending finalization of the above Civil Revision Petition to secure the ends of justice.

Counsel for the Petitioner(S):

1. K A NARASIMHAM

Counsel for the Respondent(S):

1. E V V S RAVI KUMAR

CIVIL REVISION PETITION NO: 1357/2023**Between:**

1. GUNDLA GOVINDA RAJULU, S/O LATE PATTABHIRAMAIAH NAIDU, HINDU, AGED 65 YEARS, OCC BUSINESS, R/O VARADHA NAGAR, GUDUR TOWN, SPSR NELLORE DISTRICT.
2. GUNDLA KODANDAPANI, S/O LATE PATTABHIRAMAIAH NAIDU, HINDU, AGED 60 YEARS, OCC BUSINESS, R/O D.NO.8/151, NARAYANAMMA STREET, GUDUR TOWN, SPSR NELLORE DISTRICT.

...PETITIONER(S)

AND

1. PEDDISETTY SRINIVASA KUMAR, S/O JITHENDRANATH BABU, HINDU, AGED ABOUT 44 YEARS.
2. PEDDISETTY GOVINDA RAJA PANKAJ MALICK, S/O JITHENDRANATH BABU, HINDU, AGED ABOUT 39 YEARS, R/O D.NO.25/2/834, REVENUE COLONY, SHIROMANI NAGAR, NELLORE TOWN, SPSR NELLORE DISTRICT.
3. PEDDISETTY SWAROOPA RANI, D/O LATE PEDDISETTY MALLIKARJUNA RAO, HINDU, AGED ABOUT 70 YEARS, OCC BUSINESS R/O SHANTHINAGAR, NEAR KASTHURI DEVI SCHOOL, NELLORE, SPSR NELLORE DISTRICT.
4. PEDDISETTY BANSALI BABU, S/O LATE PEDDISETTY MALLIKARJUNA RAO, HINDU, AGED ABOUT 67 YEARS, OCC BUSINESS R/O SHANTHINAGAR, NEAR KASTHURI DEVI SCHOOL, NELLORE, SPSR NELLORE DISTRICT.
5. PEDDISETTY VISHNUPRIYA RANI, D/O LATE PEDDISETTY MALLIKARJUNA RAO, HINDU, AGED ABOUT 60 YEARS, OCC BUSINESS R/O SHANTHINAGAR, NEAR KASTHURI DEVI SCHOOL, NELLORE, SPSR NELLORE DISTRICT.
6. PEDDISETTY GOVINDA RAJA RAM PANKAJ MALICK, S/O LATE PEDDISETTY MALLIKARJUNA RAO, HINDU, AGED ABOUT 55 YEARS, OCC BUSINESS R/O SHANTHINAGAR, NEAR KASTHURI DEVI SCHOOL, NELLORE, SPSR NELLORE DISTRICT.
7. MANCHALA DEVIKA RANI, W/O RAMACHANDRA RAO, HINDU, AGED ABOUT 68 YEARS, OCC DOCTOR, R/O TADEPALLIGUDEM TOWN, WEST GODAVARI DISTRICT.

8.GADAMSETTY PADMAVATHI, W/O RATNAIAH, HINDU, AGED ABOUT 45 YEARS, R/O D.NO.13/5, KUMMARI VEEDHI, EAST GUDUR TOWN, GUDUR MANDAL, 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 please to allow this Civil Revision Petition by setting aside the order dated.10.3.2023 passed in I.A.No.372/2022 in O.S.No.264/2014 on the file of the Court of the VII Additional District Judge, Gudur, SPSR Nellore District to secure the ends of justice and to pass

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 grant stay of all proceedings in &V O.S.No.264/2014 on the file of the Court of the VII Additional District Judge, Gudur, SPSR Nellore District pending finalization of the above Civil Revision Petition to secure the ends of justice.

Counsel for the Petitioner(S):

1.K A NARASIMHAM

Counsel for the Respondent(S):

1.E V V S RAVI KUMAR

CIVIL REVISION PETITION NO: 1359/2023

Between:

1.GUNDLA GOVINDA RAJULU, S/O LATE PATTABHIRAMAIAH NAIDU, HINDU, AGED 65 YEARS, OCC. BUSINESS, R/O VARADHA NAGAR, GUDUR TOWN, SPSR NELLORE DISTRICT.

2.GUNDLA KODANDAPANI,, S/O LATE PATTABHIRAMAIAH NAIDU, HINDU, AGED 60 YEARS, OCC. BUSINESS, R/O D.NO.8/151, NARAYANAMMA STREET, GUDUR TOWN, SPSR NELLORE DISTRICT.

...PETITIONER(S)

AND

1. PEDDISETTY SRINIVASA KUMAR, S/O JITHENDRANATH BABU, HINDU, AGED ABOUT 44 YEARS.
2. PEDDISOTTY GOVINDA RAJA PANKAJ MALICK, S/O JITHENDRANATH BABU, HINDU. AGED ABOUT 39 YEARS, R/O D.NO.25/2/834, REVENUE COLONY, SHIROMANI NAGAR, NELLORE TOWN, SPSR NELLORE DISTRICT.
3. PEDDISETTY SWAROOPA RANI, D/O LATE PEDDISETTY MALLIKARJUNA RAO, HINDU, AGED ABOUT 70 YEARS, OCC. BUSINESS R/O SHANTHINAGAR, NEAR KASTHURI DEVI SCHOOL, NELLORE, SPSR NELLORE DISTRICT.
4. PEDDISETTY BANSALI BABU, S/O LATE PEDDISETTY MALLIKARJUNA RAO, HINDU, AGED ABOUT 67 YEARS, OCC. BUSINESS R/O SHANTHINAGAR, NEAR KASTHURI DEVI SCHOOL, NELLORE, SPSR NELLORE DISTRICT.
5. PEDDISETTY VISHNUPRIYA RANI, D/O LATE PEDDISETTY MALLIKARJUNA RAO, HINDU, AGED ABOUT 60 YEARS, OCC. BUSINESS R/O SHANTHINAGAR, NEAR KASTHURI DEVI SCHOOL, NELLORE, SPSR NELLORE DISTRICT.
6. PEDDISETTY GOVINDA RAJA RAM PANKAJ MALICK, S/O LATE PEDDISETTY MALLIKARJUNA RAO, HINDU, AGED ABOUT 55 YEARS, OCC. BUSINESS R/O SHANTHINAGAR, NEAR KASTHURI DEVI SCHOOL, NELLORE, SPSR NELLORE DISTRICT.
7. MANCHALA DEVIKA RANI, W/O RAMACHANDRA RAO, HINDU, AGED ABOUT 68 YEARS, OCC. DOCTOR, R/O TADEPALLIGUDEM TOWN, WEST GODAVARI DISTRICT.
8. SOMISETTY JAYARAM PAWAN KUMAR, S/O RAMASUBBAIAH, AGED 40 YEARS, TYAGARAJA VEEDHI, GUDUR TOWN, GUDUR MANDAL, 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 please to allow this Civil Revision Petition by setting aside the order dated 10.3.2023 passed in I.A.No.3/2022 in O.S.No.201/2014 on the file of the Court of the VII Additional District Judge, Gudur, SPSR Nellore District to secure the ends of justice and to pass

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 pleased to grant stay of all proceedings in O.S.No.201/2014 on the file of the Court of the VII th Additional District Judge, Gudur, SPSR Nellore District pending finalization of the above Civil Revision Petition to secure the ends of justice.

Counsel for the Petitioner(S):

1.K A NARASIMHAM

Counsel for the Respondent(S):

1.

The Court made the following:

COMMON ORDER:

Civil Revision Petition No.1358 of 2023 is filed by the petitioners-plaintiffs under Article 227 of the Constitution of India challenging the order dated 10.03.2023 passed in I.A.No.373 of 2022 in O.S.No.227 of 2014 by the VII Additional District Judge, Gudur, whereby, the Trial Court dismissed the said interlocutory application filed Under Order VI Rule 17 of Code of Civil Procedure (for short "C.P.C.") to permit the petitioners/plaintiffs to amend the plaint.

2) Civil Revision Petition No.1357 of 2023 is filed by the petitioners-plaintiffs under Article 227 of the Constitution of India challenging the order dated 10.03.2023 passed in I.A.No.372 of 2022 in O.S.No.264 of 2014 by the VII Additional District Judge, Gudur, whereby, the Trial Court dismissed the said interlocutory application filed Under Order VI Rule 17 of Code of Civil Procedure (for short "C.P.C.") to permit the petitioners/plaintiffs to amend the plaint.

3) Civil Revision Petition No.1359 of 2023 is filed by the petitioners-plaintiffs under Article 227 of the Constitution of India challenging the order dated 10.03.2023 passed in I.A.No.03 of 2022 in O.S.No.201 of 2014 by the VII Additional District Judge, Gudur, whereby, the Trial Court dismissed the said interlocutory application filed Under Order VI Rule 17 of Code of Civil Procedure (for short "C.P.C.") to permit the petitioners/plaintiffs to amend the plaint.

4) Since the petitioners and the respondents in both the revision petitions are one and the same and the issue involved in these revisions is identical, I find that it is appropriate to decide these revision petitions by way of a common order by taking C.R.P.No.1358 of 2023 as lead petition.

5) It is the case of the petitioners that One G.Kodandapani and G.Janakamma are their grandparents. Their grandfather Kodandapani was the owner of 152 Ankanams and their grandmother G.Janakamma was the owner of 120 Ankanams and it is her Stridhana property. However, their grandparents blessed with two sons and four daughters. As per the Hindu law, the said 6 persons are entitled to 1/6th share each in the petitioners grandmother's property of 120 Ankanams. As far as their ancestral property of 152 Ankanams which was in the possession of their grandfather initially, he along with his two sons are entitled to 1/3rd share each is to be partitioned amongst six children. After the death of the grandparents of the petitioners, their father who is the eldest son used to look after the affairs of the entire family.

6) As things stood thus, one of the daughters filed suit O.S.No.128 of 1975 seeking partition for her 1/6th share. The said suit was finally decreed allotting 1/6th share to her. Out of the remaining 5 members, one son and two daughters died. Accordingly, father of the petitioners and one daughter are became absolute owners of the said property. Out of them, daughter after marriage blessed with 8 children. As she is living separately in her matrimonial home, she is not at all in possession and enjoyment of

the property. Therefore, the petitioners – plaintiffs are in possession of the property. The petitioners have leased out the property to one Pokala Sadasivaiah and used to collect rents and paying taxes. When respondent Nos.3 to 7 raised a dispute with to the property, the said 3rd party Pokala Sadasivaiah filed suit O.S.No.57 of 2003 to determine the persons entitled to receive the usufruct and to have possession over the property, in which the petitioners were arrayed as party defendants.

7) The said inter-pleader suit was decreed holding the possession and entitlement of the petitioners – plaintiffs to receive the rents from Pokala sadasivaiah. However, the Court below granted an injunction in his favour not to evict him forcibly. The said decree and judgment is a vital document to set the rights of the parties at rest. However, respondent Nos.3 to 7 while creating 3rd party interest sold away certain portions of the property under various sale deeds as if they are having title and possession of the said property.

8) At that stage, the petitioners – plaintiffs were constrained to file suit O.SNo.227 of 2014 seeking cancellation of sale deeds dated 27.11.2009, dated 27.11.2009 (subject matter of C.R.P.No.1357 of 2023), dated 18.01.2009 (subject matter of C.R.P.No.1359 of 2023), wherein plaintiffs evidence was completed by 2020. After completion of plaintiffs' evidence, the petitioners have identified that the respondents-defendants being ill-advised apart from creating 3rd party rights had also could able to make the plaintiff who got filed the inter-leader suit to become hostile, in order to see the decree

passed in the said inter-pleader suit unenforceable and un-executable, got the buildings demolished and went on to execute the settlement deeds etc.

9) At this stage, the petitioners-plaintiffs filed interlocutory application Nos.373, 372 and 03 of 2022 respectively under Order VI Rule 17 of C.P.C. seeking amendment of the plaint with some prayers which include the declaration of their title and accrual of the rights by way of adverse possession while placing reliance on the decree and judgment in O.S.No.57 of 2003. The said applications were dismissed by the Court below. Aggrieved by the same, the petitioners – plaintiffs filed these three revision petitions.

10) Learned counsel for the revision petitioners – plaintiffs contended that the amendment can be allowed at any stage of the suit and the amendment sought for by the petitioners must be allowed as the same alone determine the real questions in controversy between the parties and will also avoid multiplicity of the proceedings. The trial Court should have seen that the rights of the parties are to be determined as per law and as per their entitlement and requested to allow the revisions.

11) Learned counsel for the respondents – defendants contended that the amendment sought for the petitioners-plaintiffs cannot be allowed as it would change the nature of the suit, and supported the order of the Court below in all respects and requested this Court to dismiss the revision petition.

12) Originally, O.S.No.151 of 2010 was filed by the petitioners/plaintiffs on 23.08.2010 for cancellation of sale deed dated 27.11.2009, in which respondent No.8 -defendant No.8 filed written statement on 11.11.2010 duly stating that he has been in possession and enjoyment of the plaint schedule property and denied the possession of the petitioners/plaintiffs in the year 2010 itself. Thereafter, the said suit was transferred and renumbered as O.S.No.227 of 2014. However, the present applications were filed in the year 2022 i.e. after lapse of 12 years under Order VI Rule 17 of C.P.C. For better appreciation of the case, it is apposite to extract Oder VI Rule 17 of C.P.C.

“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.”

13) It can be understood from the above that Order VI Rule 17 consists of two parts viz., the first part is that the Court may at any stage of the proceedings allow either party to amend pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties.

14) In “Suhrid Singh @ Sardool Singh Vs. Randhir Singh (Civil Appeal Nos.2811-2813 of 2010 (arising out of SLP (C) Nos.6745-47/2009)” relied on by the learned counsel for the petitioners, the Hon’ble Supreme Court of India held as follows:

“Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him.”

15) The law laid down in the said judgment is not in dispute. In the said facts of the case, the amendment was sought for amendment of court fee, but in the present case, the petitioners-plaintiffs filed petition for amendment of the plaint with new cause of action. Therefore, the said judgment would not be helpful to the petitioners to prove their case.

16) In “**G.S.Prakash Vs. Polasa Hanumanlu**¹”, relied on by the learned counsel for the petitioners, the High Court of Andhra Pradesh held as follows:

“On a careful analysis of the judicial precedents referred to above, it needs to be held that as a general rule, the Courts have to adopt a liberal approach in considering the applications for amendment of pleadings, subject to certain exceptions. Without intending to be exhaustive, but only illustrative, broadly stated, instances on either side are stated hereunder:

“Instances where amendments have to be allowed:

¹ 2014 SCC OnLine Hyd 1380

(a) All pre-trial stage (prior to examination of witnesses) amendments which do not alter the nature and character of the suit and substitute or introduce new cause of action;

(b) In cases of pending or post-trial amendments, the Court must allow the same subject to the applicant, in addition to satisfy the condition (a) supra, satisfying two other conditions, viz., (i) that the amendment is necessary for determining the real questions in controversy and (ii) that despite due diligence, the applicant could not move the application at an earlier stage;

(c) Where, the proposed amendment will not work injustice or cause prejudice to the other side;

(d) Where, by the proposed amendment the position of the other party will be altered, but the same can be compensated by costs;

(e) Even where the proposed amendment introduces inconsistency in pleadings, if by the proposed amendment, the party does not seek to resile from the admissions if any made in the original pleadings;

(f) Where the proposed amendment relates to a time barred claim and the Court is satisfied that allowing such amendment really subserves the cause of justice and avoids further litigation.

Instances where amendments have to be refused:

(i) Where by the proposed amendment the party seeks to alter the nature, character and constitution of the suit (mere inconsistent pleadings may not, in all cases, change the nature

and character of the suit) or substitute cause of action or introduce a distinct cause of action;

(ii) where the valuable defence by way of admissions by a party has accrued to the opposite party and by the proposed amendment the party intends to resile from such admissions;

(iii) where the position of the other party will be altered by the proposed amendment and the injury caused to him by such alteration could not be compensated in costs.

(iv) Where the proposed amendment lacks bonafides and is far too belated and the party seeking the amendment was not diligent in approaching the court;

(v) Where a fresh suit, if instituted on the proposed amendments, will be barred by law;"

17) Learned counsel for the petitioners also relied on the judgment of Hon'ble Supreme Court of India "***Hussain Ahmed Choudhury Vs. Habibur Rahman(Dead) Through LRs***²" to contend that the amendment of the plaint can be allowed at any stage of the proceedings.

18) In the facts of the said case, suit was filed by plaintiff, seeking declaration, confirmation of possession and mandatory injunction over suit land, later it was amended to seek recovery of possession as plaintiff was dispossessed during pendency of suit. The said suit was decreed in favour of Plaintiff holding that Gift Deed was validly

² 2025 (4) ALT 54

executed by Plaintiff's grandfather in his favour and Defendants No. 1 to 6 therein had no saleable interest to sell suit land. The law laid down in the said case is not in dispute. However, the same is not applicable to the present facts of the case as the petitioners-plaintiffs herein filed the amendment petition after long lapse of 12 years.

19) In “***Basavaraj Vs. Indira and others***³” relied on by the learned counsel for the respondents, the Hon’ble Supreme Court held as follows:

“The proviso to Order VI Rule 17 CPC provides 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.”

20) In “***Vempati Rama Kotamma Vs. Oruganti Jayaprakash Reddy***⁴” relied on by the learned counsel for the respondents, this Court held as follows:

“It is settled law that the Court shall consider pre-trial amendments liberally. However, post-trial amendments the Court must exercise its discretion and should see that whether the amendment is necessary for the purpose of determining the real controversy between the parties. If it finds that the parties could not have raised the issue in spite of due diligence before commencement of trial and such discretion must be exercised by applying the judicial mind.”

³ (2024) 3 SCC 705

⁴ AIR Online 2022 AP 297

21) The law laid down in "***Basavaraj Vs. Indira and others***" and "***Vempati Rama Kotamma Vs. Oruganti Jayaprakash Reddy***" (referred supra) is squarely applicable to the present facts of the case as in the case on hand, the petitioners – plaintiffs sought for amendment after commencement of trial.

22) Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17 of C.P.C. The Hon'ble Apex Court in "***Life Insurance Corporation of India Vs. Sanjeev Builders Pvt. Ltd. and Another***⁵", relied on by the learned counsel for the petitioners, after considering numerous precedents in regard to the amendment of pleadings, culled out certain principles:

(i) 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 Code of Civil Procedure.

(ii) In the following scenario such applications should be ordinarily allowed if the amendment is for effective and proper adjudication of the controversy between the parties to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.

⁵ 2022 SCC OnLine 1128

(iii) Amendments, while generally should be allowed, the same should be disallowed if -

(a) By the amendment, the parties seeking amendment does not seek to withdraw any clear admission made by the party which confers a right on the other side.

(b) The amendment does not raise a time-barred claim, resulting in the divesting of the other side of a valuable accrued right (in certain situations)

(c) The amendment completely changes the nature of the suit;

(d) The prayer for amendment is malafide,

(e) By the amendment, the other side should not lose a valid defence.

(iv) Some general principles to be kept in mind are-

(I) The court should avoid a hyper-technical approach; ordinarily be liberal, especially when the opposite party can be compensated by costs.

(II) Amendment may be justifiably allowed where it is intended to rectify the absence of material particulars in the plaint or introduce an additional or a new approach.

(III) The amendment should not change the cause of action, so as to set up an entirely new case, foreign to the case set up in the plaint."

23) In the present case, the petitioners - plaintiffs are seeking amendment of Plaintiff, to claim a fresh reliefs (1) "declaration of title", (2) "recovery of possession of the plaintiff schedule property" and also (3) "mandatory injunction directing the respondents/defendants to remove the illegal and unlawful constructions over the plaintiff schedule property". Only respondent No.8 – Defendant No.8 contested in this petition and filed counter denying all the contents of the petition and contended that he has been in possession and enjoyment of the plaintiff 'C' schedule property as on the date of filing of the Suit O.S.No.227 of 2014 filed in the year 2010 and he has taken said plea in the written statement filed long back on 11.11.2010 and the petitioners – plaintiffs after long gap of 12 years, came with a plea of their dispossession and illegal occupation of the plaintiff schedule property by respondent No.8 – defendant No.8 on alleged date in the last week of August, 2021. The petitioners - plaintiffs pleaded that respondent No.8 – defendant No.8 trying to make construction in hurried manner and respondent No.8 – defendant No.8 has executed two registered sale deeds dated 18.01.2021 in favour of his son Rajesh and daughter Deepti in respect of plaintiff schedule property in the above Suit O.S.No.227 of 2014. But the petitioners-plaintiffs have not produced any evidence either oral or documentary before the court to establish *prima facie* that respondent No.8 – defendant No.8 dispossessed them and

illegal occupied the plant schedule property. There is no material on record to believe that respondent No.8 – defendant No.8 trespassed into the plaint schedule property. Respondent No.8 – defendant No.8 in the year 2010 itself pleaded in his written statement dated 11.11.2010 that he has been in possession and enjoyment of the plaint schedule property and denied the possession of the petitioners in the year 2010 itself by filing his written statement. In fact the main suit is filed against respondent No.8 – defendant No.8 and sought permanent injunction against all the respondents. The reliefs sought in the main Suit are only for cancellation of registered sale deed dated 27.11.2009 and for permanent injunction as against the respondents. It can also be observed that if the petitioners – plaintiffs succeeded in the said suit, automatically the subsequent sale deeds executed by defendant No.8 would become void. If the proposed amendment is permitted, it would change the basic cause of action, structure and nature of the Suit which is not sustainable in the eye of law.

24) The petitioners-plaintiffs pleaded in the present petition that respondent No.8 – defendant No.8 trying to make construction in hurried manner and has executed two registered sale deeds dated 18.01.2021 in favour of the his son Rajesh and daughter Deepti in respect of plant schedule property, who in fact are not parties to the suit. The alleged sale deeds dated 18.01.2021 in favour of her son Rajesh and daughter Deepti of respondent No.8 are not marked by the petitioners – plaintiffs in the present petition. No third party affidavits are filed supporting the plea of petitioners/ plaintiffs.

25) The new cause of action arose for fresh litigation and it can not be merged with the old pending litigation which started long back on different cause of action. In the main suit, the evidence of plaintiffs already completed and chief examination affidavit of D.W.1 is also filed and posted for cross examination of D.W.1. At the fag end of the Trial in a very old pending suit, the petitioners - plaintiffs, filed the present petition with a new cause of action and for different reliefs which makes the Suit very comprehensive and complicated. If respondent No.8 – defendant No.8 has illegally trespassed into the entire or part of the plaint schedule property, in the last week of August, 2021, the only option left for the petitioners – petitioners is to take separate legal steps to evict respondent No.8 – defendant No.8 under due process of Law. The new facts should not be merged with very old existing facts as they would distract the original issues already framed in the suit.

26) Order VI Rule 17 of CPC, does not permit the amendment after the Trial is commenced, unless and until the party establishes that in spite of due diligence, he could not raise the same before commencement of trial. In the instant case, the petitioners - plaintiffs, failed to prove that in spite of due diligence they could not raise, the pleas for proposed amendment before commencement of the trial. There was an ample opportunity for the petitioners - plaintiffs after filing of the written statement by respondent No.8 – defendant No.8 in the year 2010. The petitioners kept silent for about more than 12 years without seeking any amendment for declaration and recovery of possession and at the fag end, they

came with the present petition without showing any *prima facie* evidence, to believe that their case is genuine and trust worthy. The petitioners filed total three suits including above suit, against the same respondents/defendants. In all three suits, the petitioners – plaintiffs filed similar petitions without valid reasons and without *prima facie* evidence to support their pleas. If the Courts keep on permitting the parties to file such petitions without valid and reasonable grounds, undue delay would be caused in disposal of the cases.

27) Further, the limitation for filing of the suit for recovery of possession based on title perfected by adverse possession, is 12 years as per Article 65 of Limitation Act, 1963. Respondent No.8 – Defendant No.8 has denied the title and possession of the petitioners - plaintiffs long back in the year 2010, by way of filing written statement dated 11.11.2010. The petitioners - plaintiffs in this case repeatedly pleaded that they perfected title by adverse possession. Article 65 of the Limitation Act, 1963 prescribes timeline of 12 years, within which an aggrieved person may file suit for recovery of Immovable property or any interest therein based on proprietary title. After an uninterrupted 12 years of possession, the person is said to have perfected his title over the subject property by way of adverse possession provided that he proves that his possession is peaceful, open and continuous. Therefore, the amendment sought in the present petition would definitely disturb the original issues framed in the suit and divert the basic pleadings and reliefs. Under the guise of amendment, the petitioners-plaintiffs

intended to built-up a new case as filing of separate suit is barred by limitation.

28) In view of the aforesaid discussion, this Court is of the opinion that the Trial Court did commit no error warranting interference of this Court in the order dated 10.03.2023 passed in I.A.No.373 of 2022 in O.S.No.227 of 2014 and the revision is devoid of merits, consequently, the civil revision petition No.1358 of 2023 is liable to be dismissed.

29) In view of the discussion made in Civil Revision Petition No.1358 of 2023, the Civil Revision Petition Nos.1357 and 1359 of 2023 are also liable to be dismissed.

30) Accordingly, the Civil Revision Petition Nos.1358, 1357 and 1359 of 2023 are dismissed. There shall be no order as to costs.

31) Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE V.SUJATHA

08.01.2026
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