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APHC010439352024



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

[3333]

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

**THE HONOURABLE SMT JUSTICE V.SUJATHA
CIVIL REVISION PETITION NO: 2285/2024**

Between:

1. MUTHAM CHETTY MUNEIAHA, (DIED)
2. M. SYAMALA, W/O. LATE M MUNEIAH, AGED ABOUT 53 YEARS. CULTIVATION, R/O. VEMURU VILLAGE AND POST, TIRUPATI RURAL MANDAL, CHITTOOR DISTRICT.
3. M. HIMABINDU, W/O. VENKATESWARLU, AGED ABOUT 37 YEARS. HOUSE WIFE. FLAT NO. 315, SPANDANA APARTMENT, THUMMALAGUNTA PANCHAYAT, TIRUPATI RURAL MANDAL, CHITTOOR DIST.
4. M BHAGYALAKSHMI, W/O. VENKATESWARLU, AGED ABOUT 35 YEARS. HOUSEWIFE, FLAT NO. 315, SPANDANA APARTMENT, THUMMALAGUNTA PANCHAYAT, TIRUPATI RURAL MANDAL, CHITTOOR DIST
...PETITIONER(S)

AND

1. M VENKATA SUBBAIAH, (DIED)
2. M SUBRAMANYAM, S/O. M VENKATA SUBBAIAH, AGED ABOUT 55 YEARS. CULTIVATION R/O. D NO. 1-3/3, VEMURU VILLAGE AND POST, TIRUPATI CHITTOOR DISTRICT.
3. M SUDHAKAR, S/O. M VENKATA SUBBAIAH, AGED ABOUT 52 YEARS CULTIVATION D NO. 1-3/4, VEMURU VILLAGE AND POST, TIRUPATI CHITTOOR DISTRICT.
4. M LOKANADHAM, S/O. M VENKATA SUBBAIAH, AGED ABOUT 50 YEARS. CULTIVATION, D NO. 1/3/4, VEMURU VILLAGE AND POST, TIRUPATI CHITTOOR DISTRICT.
5. R DHANALAKSHMI, W/O. RAVULA SIVAJI, AGED ABOUT 55 YEARS, BUSINESS, R/O. D NO. 18-1-374, TIRUPATI TOWN

AND URBAN MANDAL, CHITTOOR DISTRICT.

6. SYAMALA CHENGALRAYULU, W/O. S SUBBARAMAIAH, AGED ABOUT 65 YEARS, R/O. D NO. 18-1-84, BHAVANI NAGAR, TIRUPATI TOWN AN URBAN MANDAL, CHITTOOR DISTRICT.

7. M SUSEELA, W/O. M VENKATA SUBBAIAH, AGED ABOUT 75 YEARS. HOUSEWIFE R/O. D NO. 1-3/4, VEMURU VILLAGE AND POST, TIRUPTI RURAL MANDAL, CHITTOOR DISTRICT.

8. P SUMATHI, W/O. P RAJENDRA, AGED ABOUT 50 YEARS, HOUSEWIFE, D NO. 8-15, SAMAJAM STREET, NEAR SURYANARAYANA TEMPLE, TIRUCHANUR, TIRUPATI RURAL MANDAL, CHITTOOR 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 Aggrieved by the decree and order dated 4.3.2024 passed in IA No. 621/2018 in OS No. 167/2012 on the file of IV Addl District Judge, Tirupati,

IA NO: 1 OF 2024

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 further proceedings in OS No. 167/2012 on the file of IV Additional District Judge, Tirupati pending disposal of the above CRP in the interest of justice.

IA NO: 1 OF 2025

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 vacate the interim order dated 21.03.2025 in C.R.P.No.2285 of 2024 and pass

Counsel for the Petitioner(S):

1. T C KRISHNAN

Counsel for the Respondent(S):

1. P JAGADISH CHANDRA PRASAD

2.

The Court made the following:

ORDER:

This civil revision petition is filed by the petitioners – plaintiffs under Article 227 of the Constitution of India challenging the order date 04.03.2024 passed in I.A.No.621 of 2018 in O.S.No.167 of 2012 by the IV Additional District Judge, Tirupati, whereby, the Trial Court dismissed the said interlocutory application filed under Order VI Rule 17 and Section 151 of Code of Civil Procedure (for short “C.P.C.”) to amend the plaint.

2) For the sake of convenience, the parties to the revision will hereinafter be referred as plaintiffs and defendants, as arrayed before the Trial Court in I.A.No.621 of 2018 in O.S.No.167 of 2012.

3) Initially, one Mutham Chetty Muneiaha, who is the husband of petitioner No.2, and father of petitioner Nos.3 and 4 filed suit O.S.No.167 of 2012 for declaration of title and consequential permanent injunction in respect of plaint schedule property. After death of said Mutham Chetty Muneiaha, petitioner Nos.2 to 4 are brought on record vide orders passed in I.A.No.379 of 2019 dated 06.11.2019 as plaintiff Nos.2 to 4. After examination of P.Ws.1 to 3, the deceased Mutham Chetty Muneiaha secured some documents from the public authorities about correct genealogy instead of mentioned in the plaint and filed an application in the year 2018 to receive those documents and to amend the plaint as it is necessary to bring true facts on record based on public documents. As the suit was filed way back in 2012, the trial Court dismissed the application I.A.No.621 of 2018 seeking amendment on the ground that the

evidence was adduced basing on the earlier pleadings of the both the parties. Aggrieved by the same, the present revision petition is filed by the petitioners – plaintiffs.

4) When the matter listed for hearing, on 21.03.2025 this Court passed the following interim order.

“.....In view of the rival contentions, post after two (02) weeks. Till then, there shall be stay of all further proceedings in O.S.No.167 of 2012 on the file of the Court of IV Additional District Judge, Tirupati”]

5) Thereafter, the said interim order has been extended from time to time.

6) Respondent No.6 filed counter contended that the plaintiffs filed suit O.S.No.167 of 2012 seeking declaration of title and permanent injunction claiming ownership over Ac.2.47 cents in Sy.No.330 of Vemuru Village. The case of the plaintiffs is based on a specific genealogy and a registered sale deed dated 22.11.1976 allegedly executed by Govindaswamy in favour of their ancestor Muthamsetty Subbaiah. After filing the suit, the petitioners filed an amendment vide I.A.No.630 of 2017, wherein they themselves replaced the earlier genealogy with a second version, adding new names, modifying family branches, and altering the claimed source of title. This amendment was allowed by the Trial Court vide order dated 13.11.2017. Thereafter, the petitioners were examined as P.Ws.1 to 3 and they were subjected to extensive cross-examination and there are contradictions between the earlier pleading and oral testimony.

7) After cross-examination of P.Ws.1 to 3, the petitioners - plaintiffs suddenly claimed that they had discovered "correct genealogy" and "new documents" and filed I.A. 621 of 2018 seeking to delete the entire earlier genealogy and replace it with a third genealogy, which cannot be allowed. By virtue of the proposed amendment, the petitioners seek to change their entire flow of title and source of ownership.

8) Originally, the suit was based solely on a registered sale deed dated 22.11.1976 purportedly executed by one Govindaswamy in favour of the Muthansetty Subbaiah. The petitioners conducted their entire case, evidence, and cross-examination on this foundational fact. Now, however, they claim that the suit schedule property is ancestral joint family property devolving from several generations, thereby discarding their earlier admitted basis of title. This sudden shift transforms the nature of the suit from one based on a sale deed to one based on ancestral inheritance. The very foundation of the plaintiff's case is rendered wholly unreliable, as the genealogies put forth by them have undergone three drastic and mutually contradictory transformations.

9) In the original plaint, the plaintiff pleaded that the ancestor Subbanna had two sons, namely M.Venkatarayulu Chetty and M.Munaswamy Chetty. However, in the first amended plaint (vide orders in I.A. No. 630 of 2017 dated 13.11.2017), the plaintiffs altered this position and asserted that Subbanna had only one son, thereby contradicting their own earlier version. Again, in the proposed amendment now sought, the plaintiffs introduced a third

genealogy wherein, in the branch of Subbarayulu, it is newly shown that M.Munaswamy Chetty had two sons Pedda Munaswamy Chetty and Chinna Munaswamy Chetty which is in complete variance with both the original and earlier amended genealogies. At each stage, i.e. first in the original plaint, second in the amended plaint, and now in the present petition – the plaintiffs changed the structure of genealogy, thereby trying to change the pleadings, which cannot be permitted, and requested to dismiss the revision.

10) During hearing, learned counsel for the petitioners-plaintiffs contended that the amendment can be allowed at any stage of the suit. While the suit is under progress, they secured documents from the public authorities about the correct genealogy, and filed the present petition to amend the plaint. Therefore, to decide the real controversy, and to avoid multiplicity of proceedings, the present petition has to be allowed. Therefore, he requested this Court to allow the revision.

11) Learned counsel for the respondents-defendants supported the order of the Court below in all respects and requested this Court to dismiss the revision petition.

12) The petitioners-plaintiffs filed the petition under Order VI Rule 17 of C.P.C. seeking to amend Genealogy of their entire joint family and to delete and add certain paragraphs in the plaint. For better appreciation, this Court feels it appropriate to extract Order VI Rule 17 of C.P.C., which 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.”

13) Normally, when petitions under Order VI Rule 17 of C.P.C. are filed at pretrial stage, Court would order such applications granting leave to parties to amend their pleadings and if it is post-trial amendment, then Court may put on guard in allowing such applications since it would cause prejudice to the other parties to the suit or proceedings.

14) Order VI Rule 17 of C.P.C. consists of two parts, namely; first part is discretionary and leaves it to the Court to order amend pleadings and second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of deciding real controversy between the parties. The real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such amendment is necessary to decide the real dispute between the parties. If it is, amendment will be allowed and if it is not, amendment shall be refused. Even if the principle laid down in the above judgment is applied to the present facts of the case, the Court cannot negate the relief of amendment since the petitioners wanted to clean the dirt by bringing

certain facts to the notice of Court by amending plaint by filing petition under Order VI Rule 17 of C.P.C.

15) According to Order VI Rule 17 of C.P.C., 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. The principles to allow petitions under Order VI Rule 17 of C.P.C. are well settled, namely; the amendment shall not alter the basic structure or nature of the claim and that the amendment shall not take away the valuable right that accrued to the respondents or such amendment would not amount to withdrawal of unequivocal admissions made in the pleadings as held by the Apex Court in “**Rajkumar Guruwara (dead) through LRs Vs. S.K. Sarwagi and Company Private Limited and another**”¹. In view of the law declared by the Apex Court in the above judgment, the Court has to find out whether the proposed amendment would fall within the parameters laid down by the Apex Court and if it would fall within the ambit of the guidelines, Court can allow such amendments, otherwise reject the same.

16) In the present facts of the case, the plaintiffs filed the suit in the year 2012 seeking declaration of title and permanent injunction. In 2017, they filed petition I.A.No.630 of 2017 seeking amendment of the plaint, however, the said petition was allowed by the trial

¹ (2008) 14 SCC 364

Court. Thereafter, plaintiffs examined P.Ws.1 to 3 and they were cross-examined at length. After completion of cross-examination of P.Ws.1 to 3, the petitioners – plaintiffs filed the present petition to amend the plaint on ground that the amendment can be granted at any stage of the proceedings.

17) In “***T.Pedda Veeranna Vs. P.Lakshmi Devi***²”, relied on by the learned counsel for the petitioners, the High Court of Andhra Pradesh at Hyderabad held as follows:

“.....when once the Court arrives at the conclusion that the application for amendment is genuinely made and out of necessity and with a view to remove any ambiguity, the Court shall be liberal in granting amendment at any stage of the proceedings. The proviso therefore is only a measure of Caution against dilatory tactics but the real question to be considered is the genuineness of the application made seeking amendment. The delay can be compensated by money but shall not come in the way of adjudicating the rights of the parties properly. Therefore, if the amendment petition is filed after the trial had begun, it is obligatory on the part of the party seeking amendment to satisfy the Court that in spite of due diligence, he could not make the application at appropriate time. The Court can allow the amendment petition, if it is satisfied that the party could not pursue the remedy of seeking amendment in spite of exercising due diligence.”

18) In “***Bodhan Filling Station VS. B.Padmavathi***³”, relied on by the learned counsel for the petitioners, the High Court of Andhra

² 2010 (6) ALT 564

³ 2010 (6) ALT 564

Pradesh at Hyderabad for the State of Telangana and the State of Andhra Pradesh held that “amendment of pleading may be permitted at any stage as long as the same is necessary for determining the real questions in controversy.”

19) In “***Yalavarthi Gopala Rao Vs. Bommisetty Seshaiah***⁴” relied on by the learned counsel for the petitioners, the High Court of Andhra Pradesh at Hyderabad held that “the object of Courts and the rules of procedure is to decide the rights of parties and not to punish them for their mistakes.”

20) In “***T.Venkata Ravamma Vs. Karnati Lakshamma***⁵” relied on by the learned counsel for the petitioners, the High Court of Andhra Pradesh at Hyderabad held as follows:

“While deciding petitions filed under Order VI Rule 17 of C.P.C., Courts have to keep in mind the object of the legislature in permitting parties to amend their pleadings. The main object is to avoid multiplicity of proceedings and shorten the litigation without driving parties to further litigation.”

21) The law laid down in the said judgments is not in dispute. In view of the law laid down in the judgments (referred supra), amendment can be permitted at any stage of the proceedings. But, if the amendment petition is filed after the trial had begun, it is obligatory on the part of the party seeking amendment to satisfy the Court that in spite of due diligence, he could not make the

⁴ AIR 1975 Andhra Pradesh 155

⁵ 2015 (5) ALT 184 (S.B.)

application at appropriate time. The Court can allow the amendment petition, if it is satisfied that the party could not produce those documents in spite of exercising due diligence.

22) In “**Asian Hotels (North) Limited Vs. Alok Kumar Lodha**”⁶ relied on by the learned counsel for the respondents, the Hon’ble Supreme Court held as follows:

“The High Court while allowing the amendment application in exercise of powers Under Order 6 Rule 17 of the Code of Civil Procedure has not properly appreciated the fact and / or considered the fact that as such, by granting such an amendment and permitting Plaintiffs to amend the plaints incorporating the prayer Clause to declare the respective charges / mortgages void ab-initio, the nature of the suits will be changed. As per the settled proposition of law, if, by permitting Plaintiffs to amend the plaint including a prayer Clause nature of the suit is likely to be changed, in that case, the Court would not be justified in allowing the amendment. It would also result in misjoinder of causes of action.

23) In “**M.Revanna Vs. Anjanamma (Dead) by Legal Representatives and others**”⁷ relied on by the learned counsel for the respondents, the Hon’ble Supreme Court held as follows:

“Leave to amend may be refused if it introduces a totally different, new and inconsistent case, or challenges the fundamental character of the suit. The proviso to Order VI Rule 17 of the Code of Civil Procedure virtually prevents an application for amendment of pleadings from being allowed after the trial has

⁶ (2022) 8 SCC 145

⁷ (2019) 4 SCC 332

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 the trial. The proviso, to an extent, curtails absolute discretion to allow amendment at any stage. Therefore, the burden is on the person who seeks an amendment after commencement of the trial to show that in spite of due diligence, such an amendment could not have been sought earlier. There cannot be any dispute that an amendment cannot be claimed as a matter of right, and under all circumstances.”

24) 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***⁸”, relied on by the learned counsel for the respondents, 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

⁸ 2022 SCC OnLine 1128

to avoid multiplicity of proceedings, provided it does not result in injustice to the other side.

(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.”

25) In “**Basavaraj Vs. Indira and others**⁹” 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.”

26) In the case in hand, by virtue of the proposed amendment, the petitioners seek to change their entire flow of title and source ownership. Further, in the newly proposed paragraph, the plaintiffs, for the first time, introduced new version alleging that defendant No.1 has created false revenue records, but this allegation was never pleaded earlier. Further, the plaintiffs have failed to disclose when and under what circumstances, they were dispossessed and at what point of time the defendants’ possession allegedly became adverse. By deleting the earlier substantial paragraphs of the plaint and attempting to substitute them with these newly fabricated and vague averments, the plaintiffs are seeking to reconstruct their case and introduce a fresh cause of action. The amendment sought for by the plaintiffs is nothing but an attempt to overcome the damaging admissions and contradictions elicited during the cross-examination.

⁹ (2024) 3 SCC 705

27) Further, Order VI Rule 17 C.P.C. 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 petitioners could not have raised the same before the commencement of trial. By way of amendment, the petitioners sought to change the genealogy of the joint family of their ancestors on the ground that they are not aware of the same at the time of filing of the suit. The said contention of the plaintiffs that they are not aware of the genealogy of their joint family is not believable and they must be vigilant to describe correct genealogy of their joint family at the time of filing of the suit, however, amendment petition earlier filed by them i.e. I.A.No.630 of 2017 was allowed and by virtue of the same, genealogy was replaced with a second version, adding new names, modifying family branches. Again, the petitioners - plaintiffs filed the present petition to modify the genealogy, this is not even the pleaded before the trial Court in the application for amendment that due diligence was there at the time of filing of the suit in not seeking relief prayed for by way of amendment. They pleaded that after obtaining documents from the concerned departments, they came to know the correct genealogy. The same cannot be accepted, as they would have done the same at the time of filing of the suit or at the time of filing of the earlier amendment petition I.A.No.630 of 2017. As the petitioners want to introduce new genealogy and inconsistent case after cross-examination of P.Ws.1 to 3, the present petition cannot be allowed.

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 04.03.2024 passed in I.A.No.621 of 2018 in O.S.No.167 of 2012 and the revision is devoid of merits, consequently, the revision is liable to be dismissed.

29) In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

JUSTICE V.SUJATHA

08.01.2026
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