

HON'BLE SRI JUSTICE BANDARU SYAMSUNDER

C.R.P.No.477 of 2023

ORDER:

This Civil Revision Petition is filed by the petitioner/plaintiff under Article 227 of the Constitution of India against the orders passed by the learned VII Additional District and Sessions Judge, Visakhapatnam, in I.A.No.691 of 2022 in O.S.No.147 of 2019 dated 16.11.2022 wherein and whereby petition filed by the petitioner under Order VI Rule 17 of Code of Civil Procedure (in short 'CPC') seeking amendment of plaint with regard to her share in the plaint schedule properties has been rejected.

2. The case of the petitioner/plaintiff before the trial Court in brief is that she filed suit against respondents seeking partition and separate possession of her 1/3rd share in the plaint schedule properties, which was posted on 26.09.2022 for her side evidence. The petitioner submits that during the pendency of the suit, her mother who is shown as first defendant in the suit, died on 15.11.2020 bequeathing her properties to her by executing a registered Will in a sound and disposing state of mind in the presence of attestors and scribe on 27.09.2011, which she already filed before the Court. It is the contention of the petitioner that she was entitled to claim one share out of 3 shares in the plaint schedule

properties, as her mother executed the Will bequeathing her share in her favour, now she is entitled to claim two shares in the suit schedule properties, due to that, she is seeking amendment of the plaint claiming two shares in the plaint schedule properties, which is her share and her mother's share.

3. The respondents 2 to 4/D2 to D4 filed counter before the trial Court denying the averments in the affidavit of the petitioner. It is the contention of the petitioner that petition seeking amendment of plaint is filed at belated stage, which is not maintainable. They further submit that when petitioner is not entitled for any share in the plaint schedule properties except the share out of the share of the deceased first respondent/first defendant and when the main suit is not maintainable, the question of amendment does not arise at all. They pray to dismiss the petition.

4. After hearing both sides, learned trial Judge dismissed the petition filed by the petitioner/plaintiff.

5. Aggrieved by the orders passed by learned trial Judge, the present revision petition is filed by the petitioner/plaintiff stating that the order of the Court below is illegal, contrary to law and facts of the case. She submits that trial Court failed to appreciate the scope of

Order VI Rule 17 CPC and failed to consider the fact that amendment sought before commencement of the trial as per the contents in the registered Will dated 27.09.2011 executed by her mother which has to be allowed. It is the contention of the petitioner that she being the beneficiary under registered Will is entitled to claim share of her mother and amendment which she sought is to facilitate the Court for proper adjudication of the controversy between the parties. She prays to allow the petition.

6. I have heard Smt.T.V.Sridevi, learned counsel for the petitioner and Mr.A.S.C.Bose, learned counsel for the respondents.

7. Learned counsel for the petitioner Smt.T.V.Sridevi, would submit that at first instance petitioner filed suit for partition seeking 1/3rd share in the plaint schedule properties, as her mother died during the pendency of the suit, who is also shown as first defendant in the suit, who executed registered Will in favour of the petitioner on 27.09.2011, which came into force after the death of the plaintiff's mother, and as per the contents in the Will deed now the petitioner is entitled to claim 2/3rd share in the plaint schedule properties, due to that she sought for amendment of her plaint with regard to her share, which erroneously dismissed by the trial Court. She would further submit that in the counter filed by respondents 2 to 4, they have not denied the execution

of the registered Will dated 27.09.2011 which failed to consider by the learned trial Judge, she prays to allow the petition.

8. Learned counsel for respondents 2 to 4 Mr.A.S.C.Bose, would submit that learned trial Judge rightly appreciated the case on both sides and dismissed the petition by observing that if petitioner is allowed to amend the plaint as sought by her basing on the registered Will dated 27.09.2011, which is not yet proved, it amounts to allowing the document without any proof. He would further submit that shares in a suit for partition can be decided by the Court after adducing evidence by both sides at the time of passing preliminary decree if any. He prays to dismiss the petition.

9. Now, the point that emerges for consideration of this Court is, ***“Whether the order under challenge is sustainable, tenable and the same warrants interference of this Court under Article 227 of the Constitution of India?”***

10. Before going into the merits of the case, it would be beneficial to quote Order VI Rule 17 CPC, which reads as under:

“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.”

11. The Hon'ble Apex Court in ***Life Insurance Corporation of India Vs. Sanjeev Builders Private Limited and Another***, in Civil Appeal No.5909 of 2022 dated 01.09.2022 issued guidelines under what circumstances petition seeking for amendment of the pleadings can be allowed at para - 70, which reads as under:

“70. Our final conclusions may be summed up thus:

(i) Order II Rule 2 CPC operates as a bar against a subsequent suit if the requisite conditions for application thereof are satisfied and the field of amendment of pleadings falls far beyond its purview.

The plea of amendment being barred under Order II Rule 2 CPC is, thus, misconceived and hence negatived.

(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) The prayer for amendment is to be allowed

(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

(a) the amendment does not result in injustice to the other side,

(b) 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 and

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

(iv) A prayer for amendment is generally required to be allowed unless

(i) by the amendment, a time barred claim is sought to be introduced, in which case the fact that the claim would be time barred becomes a relevant factor for consideration,

(ii) the amendment changes the nature of the suit,

(iii) the prayer for amendment is malafide, or

(iv) by the amendment, the other side loses a valid defence.

(v) In dealing with a prayer for amendment of pleadings, the court should avoid a hypertechnical approach, and is ordinarily required to be liberal especially where the opposite party can be compensated by costs.

(vi) Where the amendment would enable the court to pinpointedly consider the dispute and would aid in rendering a more satisfactory decision, the prayer for amendment should be allowed.

(vii) Where the amendment merely sought to introduce an additional or a new approach without introducing a time barred cause of action, the amendment is liable to be allowed even after expiry of limitation.

(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. ([See Vijay Gupta v. Gagninder Kr. Gandhi & Ors.](#), 2022 SCC OnLine Del 1897)”

12. In the present case, admittedly petitioner filed suit against respondents 2 to 4 and also against her mother seeking partition of plaint schedule immovable properties claiming 1/3rd share in it. The contention of the petitioner is that during the pendency of the suit, her mother died who already executed registered Will in her favour on 27.09.2011, due to that, now she is entitled to claim 2/3rd share in the plaint schedule properties and she sought for amendment of the plaint with regard to her share in the plaint schedule properties.

13. The learned trial Judge after hearing arguments on both sides, passed the following order which is extracted hereunder:

“This Court as seen from the record observes that the petitioner initially made a claim as if the schedule property is a joint family properties, she along with her mother and the legal heirs of her deceased brother i.e., defendants 2 to 4 are entitled to one share, and there was also averment in the plaint that, her mother was acting detrimental to her interest, supporting defendants 2 to 4, and she also denied certain documents i.e., sale deed, gift deed said to be executed by 1st defendant stating that, she had no absolute right to meddle with the schedule properties, but coming to this application she pleads, as if her mother has right over the schedule properties and she has bequeathed that right in her favour. Not only for the said contra pleading, but also for the reason that, mere filing of Will does not amount to proof it, in which event, because the petitioner has relied upon a Will that would not automatically amount to proof of it's execution vesting her with the properties, covered under the Will, and only, in the event of proof of the Will by the petitioner, during trial in the suit, the consequences of such proof would follow altering the shares but at this stage for mere introduction of a new document by the petitioner, the prayer itself cannot be changed, as in a way it amounts to admission of the claim made by petitioner, under the Will which is not proper, as said above, in the event of proof of Will, then the court can automatically alter the proportion of the shares, hence at this stage the proposed amendment is unwarranted in the opinion of the court. Hence, for the said reasons the court is not inclined to allow the amendment sought for. Accordingly, the point is answered.”

14. The contention of the learned counsel for the petitioner is that in a petition filed under Order VI Rule 17 CPC, trial Court went into an

extent of discussing the merits of the case and observed that there are contra pleadings which is not warranted while disposing the petition filed by the petitioner under Order VI Rule 17 CPC. It is no doubt true that while disposing the petition under Order VI Rule 17 CPC, what has to be considered is laid down by Hon'ble Apex Court in **LIC of India Vs. Sanjeev Builders' Case** (referred supra) and it is not necessary for the trial Court to discuss the pleadings and for further pleading if any by the petitioner by way of amendment. However, as rightly observed by the learned counsel for respondents 2 to 4 when their defence is that petitioner is not entitled to claim any share in the plaint schedule properties, allowing the petitioner to amend the plaint basing on the contents in the Will amounts to admitting the Will without any proof. The petitioner/plaintiff, who filed the suit for partition and separate possession of her share in the plaint schedule properties can file registered Will deed executed by her mother during the course of her evidence and prove the same as per the procedure laid down under law and thereafter, irrespective of shares which petitioner is claiming, it is always open for the trial Court to decide the shares if any entitled by the petitioner or the respondents in the plaint schedule properties. The learned trial Judge is also observed that in the event of proof of the Will by the petitioner during the course of trial in the suit, the consequences thereof would follow altering the shares, which

observation needs no interference by this Court as learned trial Judge has not rejected the contention of the petitioner in toto and it is always open to the petitioner to claim share which she is entitled in the plaint schedule properties basing on evidence adduced by her during the course of trial. This Court did not find any illegality or irregularity in the orders passed by the trial Court which does not warrant any interference of this Court while invoking the jurisdiction under Article 227 of Constitution of India.

15. In the result, the Civil Revision Petition is dismissed. No order as to costs. Consequently, miscellaneous petitions pending, if any, shall stand closed. Interim stay granted if any, shall stand vacated. The learned trial Judge shall dispose of the suit O.S.No.147 of 2019 along with O.S.No.291 of 2012 without influenced by any observations made by her in I.A.No.691 of 2022 and also by this Court while disposing this petition, as expeditiously as possible, preferably within one year from the date of receipt of orders of this Court in the present petition.

BANDARU SYAMSUNDER, J

Dt:20.04.2023.

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HON'BLE SRI JUSTICE BANDARU SYAMSUNDER

C.R.P.No.477 of 2023

Date: 20.04.2023

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