

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD**

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**CIVIL REVISION PETITION NO.2944 OF 2023**

**CRP No.2944 OF 2023**

Between:

M/S.Sri Sai Mourya Estates and Projects Ltd., rep. by its Director  
S.Jaya Prakash

**...Petitioner**

*AND*

1. V.Suresh Reddy and others

**...Respondents**

**JUDGMENT PRONOUNCED ON: 25.01.2024**

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE K.SARATH**

1. Whether Reporters of Local : Yes/No  
newspapers may be allowed to see  
the Judgment ?
2. Whether the copies of judgment : Yes/No  
may be marked to Law  
Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No  
wish to see the fair copy of  
judgment

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**JUSTICE K.SARATH**

**THE HON'BLE SRI JUSTICE K.SARATH****+CRP NO.2944 OF 2023**

%Dated 25.01.2024

# M/S.Sri Sai Mourya Estates and Projects Ltd., rep. by its Director  
S.Jaya Prakash

**...Petitioner**

**and**

1. \$ V.Suresh Reddy S/o. V.Roshi Reddy, aged: 52 years, R/o.  
Flat No.104, SV Mansion, Nandi Nagar, Road No.14, Banjara  
Hills, Hyderabad and others

**...Respondents**

! Counsel for Petitioner : Sri Koya Prabhakar Reddy

^ Counsel for Respondents : Sri S.Sridhar

< GIST :

> HEAD NOTE :

**? Cases referred :**

1. 2022 AIR (SC)4256
2. (2013) (2) ALT 214
3. (2009) 10 SCC 84
4. Law Finder Document ID#2052888  
Of Orisha High Court dt.06.09.2022
5. (2012) 11 SCC 341

**THE HON'BLE SRI JUSTICE K.SARATH****CIVIL REVISION PETITION No.2944 of 2023****ORDER:**

1. This Civil Revision Petition is filed under Article 227 of the Constitution of India, aggrieved by the order dated 16.08.2023 in I.A.No.310 of 2023 in O.S.No.7 of 2012 on the file of I Additional District and Sessions Judge, Bhongir, whereunder the petition filed by the petitioner/plaintiff to amend the plaint was dismissed.
2. Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.
3. For the sake of convenience the parties herein are referred to as arrayed in the suit.
4. The revision petitioner is the plaintiff and the respondent Nos.1 to 3 are defendants in the suit.
5. The learned Counsel for the revision petitioner/plaintiff submits that the plaintiff filed suit in O.S.No.7 of 2012 on the file of I-Additional District and

Sessions Judge, Bhongir for cancellation of registered agreement of sale cum-GPA bearing document No.389 of 2009 dated 21.01.2009, which was said to have been executed by the defendant No.1, on behalf of the company, in favour of the defendant No.2. In the said suit interim injunction was granted in I.A.No.291 of 2012 restraining the respondents from alienating the suit schedule property. In spite of there being interim injunction order, the defendant No.2 transferred the suit schedule property in favour of his nephew, defendant No.3, through a registered document No.331 of 2018 dated 06.01.2018 and later the defendant No.2 died on 13.11.2020 and the said transaction is hit by 52-A of Transfer of Property Act and therefore if the said documents are not cancelled and remains in the public domain it would give scope to play mischief and therefore it being a consequential document to AGPA, which was sought to be cancelled as main relief, it is

necessary to amend the plaint and the petitioner filed I.A.No.310 of 2023 in O.S.No.7 of 2012 for amendment of plaint. In the said petition the defendant No.3 filed counter. The Court below after hearing both sides dismissed the petition stating that the petitioner/plaintiff has failed to show sufficient grounds to amend the plaint and dismissed the petition. Being aggrieved by the same, the petitioner filed the present revision.

6. The learned Counsel for the petitioner would submit that the impugned order passed by the Court below is illegal, contrary to law and facts and the same is liable to be set aside. The learned Counsel for the petitioner would submit that there is no bar in law to allow the petition even after commencement of trial and it can be allowed even at the stage of appeal. The amendment sought by the petitioner, more precisely to declare the registered sale deed and registered gift

settlement deed as null and void and not binding on the petitioner, except that no substantial amendment is sought for and to avoid further transferring the property to third parties it leads to multiplicity of litigation. The Court below had given utmost importance to the technicalities rather to do justice to the parties. The Court below failed to see that the subsequent events that took place during the pendency of the suit, transferring the suit property and the subsequent events are necessary to determine the real questions and the controversy involved in the *lis* among the parties, which the court below ignored and dismissed the petition and requested to set aside the impugned order by allowing the Civil Revision Petition.

7. The learned Counsel for the petitioner, in support of his contention, placed reliance on the following Judgments:

1. ***Life Insurance Corporation of India Vs. Sanjeev Builds Private Limited and others***<sup>1</sup>
2. ***Boya Pikkili Pedda Venkataswamy Vs. Boya Ramakrishnudu***<sup>2</sup>

8. On the other hand the learned Counsel for the respondents submit that the amendment sought in the petition is not legally tenable and as per Rule 28 of Civil Rules of Practice all the consequential amendments have to be sought in the petition for amendment and if such consequential amendments are not sought, then the main petition itself shall be rejected. Admittedly the petitioner has not sought the consequential amendment in the earlier petition and therefore the petitioner is not entitled to seek such relief.

9. The learned Counsel for the respondents would further submit that amendment now sought is also not legally permissible. As per law, relief of cancellation of a document can be sought by a person only if he is a

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<sup>1</sup> 2022 AIR (SC) 4256

<sup>2</sup> (2013) (2) ALT 214

party to the document in dispute. Any third party cannot seek relief of cancellation of a document as per the law settled by the Hon'ble Supreme Court and in view of the defects existing in the petition the petition is not legally maintainable and the Court below rightly dismissed the petition and there are no grounds in the revision and requested to dismiss the revision petition.

10. The learned Counsel for the respondents, in support of their contentions, relied on the following judgments:

**1. Revajeetu Builders and Developers vs. Narayanaswamy and sons and others**<sup>3</sup>

**2. Rama Chandra Nayak vs. Jadu Simadri and others**<sup>4</sup>

11. After hearing both sides and on perusing the record this Court is of the considered view that the revision petitioner herein filed suit for cancellation of registered Agreement of Sale-cum-GPA No.389 of 2009

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<sup>3</sup> (2009) 10 SCC 84

<sup>4</sup> Law Finder Document ID# 2052888  
Of Orissa High Court dt.06.09.2022



dated 21.01.2009 on the file of Sub-Registrar, Choutuppal. In the said suit the Court below passed interim injunction order on 25.01.2012 in I.A.No.291 of 2012 in O.S.No.7 of 2012, restraining the respondents/defendants from alienating the suit schedule property or creating any third party interest in the suit schedule property, on compliance Order-39, Rule 3 (a) of Civil Procedure Code. When the suit was coming for trial, the revision petitioner filed I.A.No.310 of 2023 for amendment of the plaint and the Court below through impugned order rejected application filed by the petitioner. The reasons given by the Court below are that further amendment is not necessary to effectively adjudicate on the main issues in controversy between the parties since the real issue is between the plaintiff and the deceased-defendant No.2 with regard to AGPA executed by the defendant No.1 in favour of defendant No.2 and the registered sale deed basing on

which the amendment is sought was subsequently executed by the defendant No.2 in favour of defendant No.3 basing on the AGPA during the pendency of the suit and it is hit by Section 52 of Transfer of Property Act and it will have its validity subject to the result of the main suit and the petitioner/plaintiff failed to explain as to why he could not sought the said amendment before the trial is commenced despite exercising due diligence and that the petitioner has failed to show sufficient grounds to amend the plaint as prayed for by the petitioner.

12. The Court below in the impugned orders held that the judgments relied on by the learned Counsel for the petitioner ***in Life Insurance Corporation of India Vs. Sanjeev Builders (supra 1 )*** and the Judgment of this Court in ***Boya Pikkili Pedda Venaktaswamy Vs. Boya Ramakrishnudu (supra 2)*** are not applicable to the facts of the instant case.

13. In ***Life Insurance Corporation of India vs. Sanjeev Builders (supra 1)***, the Hon'ble Supreme Court of India, held as follows:

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

xxx

xxx

(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 hyper technical 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 pin-pointedly 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”.

14. This Court in **Boya Pikkili Pedda Venkataswamy's case (supra 4)**, at para No.13, held **that :**

“This decision makes it very clear that by virtue of taking place of subsequent events, necessary amendment can be carried out in spite of the terminology used in the proviso to Order VI Rule 17 C.P.C. This also makes it very clear that by adding the reliefs the matter need not be remanded to the concerned trial Court from the concerned appellate Court for taking next course of action. Pertinently the plaintiffs' advocate wants to dispose of the matter during the appellate stage itself just on the basis of the evidence recorded already. Apart from that it is always necessary to see that the suit is disposed of administering justice to the parties litigating as required. The matter is to be viewed in a broad perspective always instead of disposing of it on the basis of narrow considerations. If relevant technicalities are to be given utmost importance, that may cause injustice to either of the parties to a litigation. The question as to whether the plaintiffs

got knowledge about the possession of the defendant over the property is a question to be decided on the basis of evidence to be recorded”.

15. The amendment sought by the petitioner in precise is to declare the registered documents executed consequent to the interim orders passed by the Court below as null and void and not binding on the petitioner. The prayer sought by the petitioner is consequential amendment to the main prayer, as even after passing interim orders restraining the respondents from alienating the property, the respondent No.2 executed sale deed in favour of respondent No.3 on 06.01.2018 and in view of the same the conduct of the parties has to be taken into account for adjudicating the matter and to avoid multiplicity of litigation or creating third party interest pending the suit is to be taken into consideration. In view of the same, the judgments relied on the learned counsel for the petitioner squarely apply to the instant case.

16. In the Judgment relied on by the learned Counsel for the respondents in **Revajeetu Builders and Developers Vs. Narayanaswamy and sons and others (supra 3)**, the Hon'ble Supreme Court, held as follows:

**Factors to be taken into consideration while dealing with the applications for amendments:**

*“ 63. On critically analyzing both the English and Indian cases, some basic principles emerge which ought to be taken into consideration while allowing or rejecting the application for amendment.*

- (1) Whether the amendment sought is imperative for proper effective adjudication of the case;*
- (2) Whether the application for amendment is bona fide or mala fide;*
- (3) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;*
- (4) refusing amendment would in fact lead to injustice or lead to multiplies litigation;*
- (5) Whether the proposed amendment constitutionally or fundamentally changes the nature and character of the case; and*
- (6) As a general rule, the court should decline amendments, if a fresh suit on the maddened claims would be barred by limitation on the date of application;*

17. In view of the guidelines framed by Hon'ble Supreme Court of India in the above judgment in

Para 63 (4) squarely apply to the instant case, as refusing amendment would in fact leads to injustice to the other side which cannot be compensated adequately in terms money.

18. In view of the same, the judgments relied on by the learned counsel for the respondents not apply to the instant case.

19. The Hon'ble Supreme Court in ***Andul Rehman and another Vs. Mohd. Ruldu and others***<sup>5</sup> held as follows:

10. Before considering the factual details and the materials placed by the appellants praying for amendment of their plaint, it is useful to refer Order VI Rule 17 which is 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: 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

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<sup>5</sup> (2012) 11 SCC 341



could not have raised the matter before the commencement of trial.”

It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The Courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

11. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, could not have raised the matter before the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of

allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case. The above principles have been reiterated by this Court in J. Samuel and Others vs. Gattu Mahesh and Others, (2012) 2 SCC 300 and Rameshkumar Agarwal vs. Rajmala Exports Pvt. Ltd. and Others, (2012) 5 SCC 337. Keeping the above principles in mind, let us consider whether the appellants have made out a case for amendment”

*(Emphasis added)*

20. In the instant case, the defendant No.2 in spite of interim injunction passed by the Court below executed consequential document in favour of defendant No.3 and the proposed amendment would not constitutionally or fundamentally change the nature and character of the suit. In view of the principles laid down by the Hon’ble Supreme Court in **Abdul Rehman’s case (supra 5)** the present revision is liable to be allowed.

21. The Court below in the impugned order held that the subsequent document executed by the defendant No.2 is hit by Section 52 of Transfer of Property Act and

it will have its validity subject to the result of the main suit. The defendant No.2, in spite of interim injunction passed by the Court below, executed registered document in favour of the defendant No.3, which clearly shows the *mala fide* intention of the defendant No.2. In view of the same, the Court below failed to consider the conduct of the parties and basing on mere technicalities passed the impugned order and the filing of the amendment petition after commencement of the trial is not a ground for rejecting amendment petition and the Court below has to take into consideration of the facts of the case. In view of the same, in the instant case, to avoid multiplicity of litigation in view of consequential events, the amendment sought by the petitioner is liable to be allowed.

22. With the above findings, the revision petition is allowed by setting aside the impugned order dated 16.08.2023 passed in I.A.No.,310 of 2023 in O.S.No.7 of

2012 on the file of the I Additional District and Sessions Judge at Bhongir and consequently, I.A.No.310 of 2023 in O.S.No.7 of 2012 stands allowed.

23. Miscellaneous petitions, if any pending in this revision, shall stand closed.

**JUSTICE K. SARATH**

Date:25.01.2024

***B/o***

***LR copy to be marked***

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