VERDICTUM.IN

HIGH COURT OF ANDHRA PRADESH

* * * *

CIVIL REVISION PETITION No.67 of 2025

Between:

Pitta Samadana Swarooparani and 3 others

..... PETITIONERS

AND

Pitta Kumari and 3 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **05.03.2025**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

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RAVI NATH TILHARI, J

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* **THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

\+ **CIVIL REVISION PETITION No.67 of 2025**

% 05.03.2025

Pitta Samadana Swarooparani and 3 others

....Petitioners

Versus

$ Pitta Kumari and 3 others

....Respondents

! Counsel for the Petitioner: Sri Sreenivasa Rao Velivela

^ Counsel for respondent : ---

< Gist :

> Head Note:

? Cases Referred:

1. 2022 SCC OnLine SC 240
2. 2014 (3) ALD 361 : MANU/AP/0006/2014
3. (2006) 4 SCC 385
4. (2006) 6 SCC 498
5. AIR 1957 SC 444 (1)
6. (2015) 13 SCC 132
7. (1969) 1 SCC 869
8. 2024 SCC OnLine SC 2615

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THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CIVIL REVISION PETITION No. 67 of 2025

JUDGMENT:

Heard Sri Sreenivasa Rao Velivela, learned counsel for the petitioners, who appeared through virtual mode.

2. This civil revision petition under Article 227 of the Constitution of India has been filed by the defendants in the suit challenging the Order dated 08.11.2024 in I.A.No.1123 of 2024 in O.S.No.72 of 2015 passed by the learned Court of XV Additional District Judge, Krishna District at Nuzvid, which was filed by the respondents/plaintiffs under Order VI Rule 17 and Section 151 CPC for amendment of the plaint in the suit for partition.

3. The respondents filed the suit for partition with respect to the plaint schedule five items in number, claiming 25 shares after division of the said properties into 49 full shares. The case of the plaintiffs was that the 1st plaintiff-Pitta Kumari was the mother of the plaintiffs No.2 to 4. The 1st plaintiff was married to Pitta Venkata Ratnam on 09.01.1974 as per Hindu religious rites and caste customs which prevailed in their community. While the marriage of the 1st plaintiff was subsisting with Venkata Ratnam, he married 1st defendant-Pitta Samadana Swarooparani. Defendants No.2 to 4 are the children from that marriage. *Inter alia,* it was claimed that joint family owned and possessed the properties as described in the plaint schedule, some of the properties were ancestral and some were acquired with ancestral nucleus. Plaintiffs No.2 to 4 and defendants No.2 to 4 and Pitta Venkata Ratnam were having 1/7th equal

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share in the plaint schedule properties. Pitta Venkata Ratnam also died intestate and the plaintiffs No.2 to 4 and defendants No.2 to 4 being class-I heirs were entitled to share equally. The 1st defendant was only proforma party and has no share. The defendants in spite of notice did not cooperate for partition and so the suit was filed.

4. The defendants/petitioners filed written statement, *inter alia,* denying the plaintiffs' case. They submitted that the 1st plaintiff was not treated as legally wedded wife of Pitta Venkata Ratnam during his lifetime. The 1st defendant was legally wedded wife, their marriage was solemnized on 26.05.1975 as per the Christian religion, tradition and as per their caste custom prevailing in their community. The marriage with the 1st defendant was the first marriage. *Inter alia,* it was submitted that there were no properties in the hands of the defendants, as per the plaint averments. The extent of certain item of the schedule property was also disputed. The properties possessed by Pitta Venkata Ratnam during his lifetime were said to be his self-acquired properties and not ancestral properties in his hands. There was no ancestral nucleolus from the ancestral properties to purchase the plaint schedule properties by Pitta Venkata Ratnam. The notice sent by the plaintiffs was duly replied, denying the claim of the plaintiffs. It was pleaded that there was no cause of action to file the suit. It deserved to be dismissed.

5. The plaintiffs filed I.A.No.1123 of 2024 for amendment of the plaint schedule properties so as to include some more properties and also to correct the extent of the properties item Nos.1 to 5, as mentioned in the plaint

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schedule. It was submitted that during the pendency of the suit, at the time of the trial, plaintiffs noticed that there were some more properties of Pitta Venkata Ramana, which could not be included and also that due to some mistake, typographical, the extent of the properties included in the plaint schedule was not correctly mentioned, and that such amendment would not change the nature of the suit and the defendants would not suffer any loss or hardship if the amendment was allowed.

6. The 3rd defendant filed counter, which was adopted by defendants No.2 and 4. They opposed the application. They submitted that the plaintiffs faced cross-examination as PWs 1 and 2 at length and after bringing out the real facts, the plaintiffs in order to cover up their *lacunae* filed amendment petition at the belated stage which was not maintainable and was liable to be dismissed. There was no typographical mistake, but clear omission. Omitting huge properties from the plaint schedule could not be a typographical mistake. They also pleaded that the plaintiffs did not file any documentary proof to show that they were in joint and constructive possession of the properties, having any right and share over the properties sought to be added and in the absence of any documentary proof, the amendment application could not be maintainable.

7. The learned Court of XV Additional District Judge, Krishna District at Nuzvid, allowed I.A.No.1123 of 2024 by Order dated 08.11.2024. It observed that the amendment application was filed seeking addition of the properties i.e., item Nos.6 to 8 and for correction of extents and survey numbers in item Nos.1

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to 5. Though the trial commenced and the plaintiffs were cross examined, but the Court was satisfied that the plaintiffs could not raise the proposed amendment plea before commencement of trial. The proposed amendment did not change the character of the suit, so, it could be considered even after the trial commenced. The plaintiffs' version that they came to know about the existence of the properties sought to be added, recently, was believed by the learned Court.

8. The objection of the defendants that the said properties, sought to be added, the plaintiffs must show that it belonged to Pitta Venkata Ratnam, for which, no documentary proof was filed, was considered, and the trail Court observed that whether those properties were the properties of the Venkata Ratnam or not could not be decided at the stage of amendment but the same could be considered and decided after full-fledged trial. However, for the present, the defendants did not choose to deny that the proposed properties sought to be added were not the properties of Pitta Venkata Ratnam.

9. With respect to the delay in filing the amendment petition, the learned Court observed that mere delay could not be a ground to deny the amendment. In a suit for partition, to avoid multiplicity of proceedings, the properties sought to be added, could be added which did not change the nature of the suit.

10. Learned counsel for the petitioners submitted that the plaintiffs did not file any proof that the properties sought to be added as item Nos.6 to 8 in the plaint schedule belonged to Pitta Venkata Ratnam, as also to show, the real

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extents of the properties already included and so the amendment should not have been allowed with respect to those properties.

11. Learned counsel for the petitioners further submitted that after commencement of trial, at the stage of, after the cross examination of plaintiffs, PWs 1 and 2, the amendment could not be allowed unless there was due diligence shown.

12. I have considered the aforesaid submissions and perused the material on record.

13. The plaintiffs/respondents had filed the suit for partition with respect to the plaint schedule properties containing items No.1 to 5, giving certain extents of those properties. They filed the application for amendment to include some more properties being items No.6 to 8 in the plaint schedule properties and also to correct the extent of the properties already included. The plea taken for filing the amendment application at the stage, after the cross examination of PWs 1 & 2, was that their previous counsel by mistake mentioned the extent of the properties already shown, incorrectly and also the door number, which were only due to mistake and typographical errors, but were not willful or wanton. The said mistake came to their notice when during trial the plaintiffs were discussing about the case with their new counsel, in the plaint it was mentioned that the joint family possessed properties but all the properties were not mentioned. It is well settled that in a suit for partition, the plaintiff has ordinarily to include all the properties. The law looks with disfavor upon properties being partitioned partially. Their correct extent is also to be

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mentioned. It is so, to avoid multiplicity of the proceedings and that all the properties, in case of plaintiffs' success in proving the case for partition, be available for equitable distribution, taking into account all the properties and their respective shares as per law, amongst the parties legally entitled to share.

14. In ***B. R. Patil v. Tulsa Y. Sawkar***[1], the Hon'ble Apex Court held as under in para-10:

> "**10.** This is the state of the pleading and evidence in support of the existence of the property other than what has been scheduled by the plaintiffs and for which partition is sought. It is true that the law looks with disfavor upon properties being partitioned partially. The principle that there cannot be a partial partition is not an absolute one. It admits of exceptions. In *Mayne's* 'Treatise on Hindu Law & Usage' 17th Edition, Paragraph 487, reads as follows:
>
> "487. Partition suit should embrace all property - Every suit for a partition should ordinarily embrace all joint properties. But this is not an inelastic rule which admits circumstances of a particular case or the interests of justice so require. Such a suit, however, may be confined to a division of property which is available at the time for an actual division and not merely for a division of status. Ordinarily a suit for partial partition does not lie. But, a suit for partial partition will lie when the portion omitted is not in the possession of coparceners and may consequently be deemed not to be really available for partition, as for instance, where part of the family property is in in the possession of a mortgagee or lessee, or is an impartible Zamindari, or held jointly with strangers to the family who have no interest in the family partition. So also, partial partition by suit is allowed where different portions of property lie in different jurisdictions, or are out of British India. When an item of property is not admitted by all the parties to the suit to be their joint property and it is contended by some of them that it belongs to an outsider, then a suit for partition of joint property excluding such item does not become legally incompetent of any rule against partial partition."

[1] 2022 SCC OnLine SC 240

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15. If some properties, according to the plaintiffs, could not be included and they sought to include such properties by way of amendment, at the stage of trial, which were also not denied by the defendants to be the properties of Pitta Venkata Ratnam, at least at this stage, I am of the view that the learned trial Court did not commit any illegality in allowing the amendment application. Whether those properties sought to be included belonged to Pitta Venkata Ratnam or not or would be liable to be partitioned or the plaintiffs would have share in the properties or not, all these are the questions, which have to be decided during the trial, in case of denial by the defendants. But, at this stage of the amendment application, the correctness or otherwise of those properties' ownership, in view of the objection raised by the defendants that the plaintiffs did not file any documentary proof, cannot be decided. It is well settled in law that at the stage of amendment, the merits or the correctness of the plea sought to be added is not required to be gone into and the amendment application is to be considered and decided as per Order 6 Rule 17 CPC.

16. In ***Waheeda Begum v. Md. Yakub***[2], this Court, on the aspect of correctness of the amendment plea, referring to the Hon'ble Apex Court judgment in ***Rajesh Kumar Agarwal v. K. K. Modi***[3], observed that the Court should not go into the correctness or falsehood of the case set up in the amendment, nor record a finding on the case set up in the amendment, at the time of considering an application for amendment.

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[2] 2014 (3) ALD 361 : MANU/AP/0006/2014
[3] (2006) 4 SCC 385

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17. In ***Rajesh Kumar Agarwal*** (supra), the Hon'ble Apex Court held as under in para-19:

> "**19.** While considering whether an application for amendment should or should not be allowed, the court should not go into the correctness or falsity of the case in the amendment. Likewise, it should not record a finding on the merits of the amendment and the merits of the amendment sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. This cardinal principle has not been followed by the High Court in the instant case."

18. So far as the submission that the trial had commenced, and consequently, the amendment was barred by the proviso to Order 6 Rule 17 CPC, is concerned, in the view of this Court, the mistake as in the plaint schedule property, the omission and also the error in the extent, came to the notice of the plaintiffs as stated during discussion with the new counsel. The only amendment sought is the addition of some more properties, and the extent of the properties already included. This does not change the nature of the suit. The suit still remains the suit for partition. The plaintiffs claim still remains for the same specified share as claimed. The same could be and was rightly considered by the learned Court even at the stage after cross examination of the plaintiffs' PW 1 and PW 2, as the learned Court found that there was due diligence and particularly when the amendment did not change the nature of the suit and would have avoided the multiplicity of the legal proceedings and in the light of the settled law that mere delay in filing the petition for amendment could not be a ground to deny the amendment.

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19. In ***Baldev Singh v. Manohar Singh***[4] the Hon'ble Apex Court observed that the Court should be extremely liberal in granting the prayer for amendment of pleadings unless serious injustice or irreparable loss is caused to the other side. The Hon'ble Apex Court further observed that Order 6 Rule 17 CPC consists of two parts. The first part is that the Court may at any stage of the proceedings allow either party to amend his pleadings and the second part is that such amendment shall be made for the purpose of determining the real controversies raised between the parties. The Hon'ble Apex Court observed that wide power and unfettered discretion has been conferred on the Court to allow amendment of the pleadings to a party in such manner and on such terms as it appears to the Court just and proper. While dealing with the prayer for amendment, it would also be necessary to keep in mind that the Court shall allow amendment of pleadings if it finds that delay in disposal of suit can be avoided and that the suit can be disposed of expeditiously.

20. With respect to the proviso, Order 6 Rule 17 of CPC, according to the Amendment Act 2002, it was observed in ***Baldev Singh*** (supra), that it restricts the Courts from permitting an amendment to be allowed in the pleadings of either of the parties, if at the time of filing an application for amendment, the trial has already commenced. However, the Court may allow amendment if it is satisfied that in spite of due diligence, the party could not have raised the matter before the commencement of trial. While dealing with the said proviso, the Hon'ble Apex Court held that commencement of trial as

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[4] (2006) 6 SCC 498

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used in proviso to Order 6 Rule 17 in the Code of Civil Procedure must be understood in the limited sense as meaning the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. So, it is not that once the trial has commenced, the amendment cannot be allowed. It can be allowed if it is necessary and if due diligence is shown by the party applying for amendment as to why it could not be made earlier. The finding on the point of due diligence as recorded by the learned trial Court, in the facts and circumstances of the case that when the new counsel was engaged and the matter was being prepared by him, the mistake was pointed out and came to the notice of the plaintiffs only with respect to the items of the properties included in the plaint schedule and the extent of the properties, already included, the application was filed immediately. Keeping in view the principles of amendment to be allowed as also that the party is not expected to go through the pleadings all the times and it is when pointed out by the counsel, the immediate steps were taken, it cannot be said that there was lack of due diligence.

21. In ***Waheeda Begum*** (supra) also, this Court, held on the scope of proviso to Order 6 Rule 17 CPC, that pre-trial amendments would normally be allowed liberally; but if amendments are allowed after commencement of the trial, normally prejudice may be caused to the opposite party, and that is why post-trial amendments are restricted unless they satisfy the conditions prescribed in the proviso. So, it's not that post trial amendments cannot be allowed. Paragraphs-24 to 26 of ***Waheeda Begum*** (supra) read as under:

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"24. In *Raj Kumar Gurawara* (6 supra), the Apex Court considered this provision and held that it confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just, provided such amendment seeks determination of the real question and controversy between the parties; that pre-trial amendments are to be allowed more liberally than those amendments sought to be made after commencement of the trial; since the opposite party would not be prejudiced if an amendment were to be allowed before the commencement of the trial, and he would have an opportunity of meeting the amendment sought to be made, pre-trial amendments would normally be allowed liberally; but if amendments are allowed after commencement of the trial, normally prejudice may be caused to the opposite party, and that is why post-trial amendments are restricted unless they satisfy the conditions prescribed in the proviso.

25. In *Vidyabai* (8 supra), it was held that for the purpose of proviso to Order VI Rule 17 CPC, the trial is deemed to have commenced on the date of the issues were framed. This decision was followed by this Court in *Ramoji Rao* (12 supra).

26. In *J. Samuel* (10 supra), considering the proviso to Order VI Rule 17 CPC, the Supreme Court held that no application for amendment shall be allowed after the trial has commenced, unless the Court has come to the conclusion that in spite of due diligence, the party could not raise the matter before the commencement of the trial. It held that due diligence is the idea that reasonable investigation is necessary before certain kinds of relief are requested and duly diligent efforts are a requirement for a party seeking to use the adjudicatory mechanism to attain the anticipated relief. It held that due diligence is a critical factor to be considered in determining whether or not an amendment sought after commencement of trial is to be allowed.

22. In ***Harish Chandra Bajpai v. Triloki Singh***[5] the Hon'ble Apex Court held that the proviso to Order VI Rule 17 CPC only limits the scope of jurisdiction of the Court to permit amendment of pleadings after the

[5] AIR 1957 SC 444 (1)

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commencement of the trial and the proviso does not create an absolute bar or shut out the entertaining of an application for amendment, post commencement of trial, but only permits it to be allowed if the party seeking amendment shows that, in spite of due diligence, he could not raise the plea previously.

23. In ***Mahila Ramkali Devi v. Nandram (dead) through legal representatives***[6] the Hon'ble Apex Court observed that the rules of procedure are intended to be a handmaid to the administration of justice. A party cannot be refused just relief merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure. The Court always gives relief to amend the pleading of the party, unless it is satisfied that the party applying was acting mala fide or that by his blunder he had caused injury to his opponent which cannot be compensated for by an order of cost. The Hon'ble Apex Court referred to the judgment in the case of ***Jai Jai Ram Manohar Lal v. National Building Material Supply***[7], in which it was held that the power to grant amendment to pleadings is intended to serve the needs of justice and is not governed by any such narrow or technical limitations.

24. In the present case, there is no finding of any *mala fide* intention or causing injury to the defendants in applying the amendment and by allowing the amendment any prejudice to the defendants could not be shown to the Court. So, applying the principles in ***Mahila Ramkali Devi*** (supra) and ***Jai Jai***

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[6] (2015) 13 SCC 132
[7] (1969) 1 SCC 869

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Ram Manohar Lal (supra) also, the amendment serving the needs of justice, on the technical limitations as argued, amendment could not be refused.

25. Recently, in ***Dinesh Goyal alias Pappu v. Suman Agarwal (Bindal)***[8] the Hon'ble Apex Court reiterated the principle relating to amendment of pleadings as under in para-11:

> "**11.** At this juncture, before proceeding to the merits of the case, let us consider the law relating to the amendments of pleadings.
>
> 11.1 The settled rule is that the Courts should adopt a liberal approach in granting leave to amend pleadings, however, the same cannot be in contravention of the statutory boundaries placed on such power. In *North Eastern Railway Administration, Gorakhpur* v. *Bhagwan Das*[6] it was held as under:
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> **"16.** Insofar as the principles which govern the question of granting or disallowing amendments under Order 6 Rule 17 CPC (as it stood at the relevant time) are concerned, these are also well settled. Order 6 Rule 17 CPC postulates amendment of pleadings at any stage of the proceedings. In *Pirgonda Hongonda Patil* v. *Kalgonda Shidgonda Patil* [AIR 1957 SC 363] which still holds the field, it was held that all amendments ought to be allowed which satisfy the two conditions : (*a*) of not working injustice to the other side, and (*b*) of being necessary for the purpose of determining the real questions in controversy between the parties. Amendments should be refused only where the other party cannot be placed in the same position as if the pleading had been originally correct, but the amendment would cause him an injury which could not be compensated in costs. [Also see *Gajanan Jaikishan Joshi* v. *Prabhakar Mohanlal Kalwar* (1990) 1 SCC 166.]"
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> 11.2 Over the years, through numerous judicial precedents certain factors have been outlined for the application of Order VI Rule 17. Recently, this Court in *Life Insurance Corporation of India* v. *Sanjeev Builders Pvt. Ltd.*[7], after

[8] 2024 SCC OnLine SC 2615

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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 CPC.

(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.

(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."

26. In ***Dinesh Goyal alias Pappu*** (supra), the amendment application by the trial Court was rejected and the High Court allowed the application. The question was if allowing such application seeking leave to amend pleadings,

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was in contravention of the statutory language. By way of the amendment what was sought to be done was, to question the validity of the Will, on the basis of which, the defendant sought to have the suit dismissed, while also expanding the scope of adjudication of the suit to include movable property. The Hon'ble Apex Court observed that it had to be demonstrated that - (a) determination of the genuineness of the Will was the necessary course of action in determining the issues *inter se* the parties; and (b) given the finding of the Court below that the application was presented post the commencement of the trial, it could not have been, despite due diligence, presented prior to such commencement. The Hon'ble Apex Court observed that be that as it may, the overarching Rule is that a liberal approach is to be adopted in consideration of such applications. The Hon'ble Apex Court further observed that two aspects required to be demonstrated in accordance with the statutory language, did not stand on the same footing. The first issue will necessarily have to weigh over the second. It was observed that the scope of the dispute in that case was limited to a procedural aspect. In the larger scheme, the dispute pertained to succession. If there was a Will, it had to be honoured. If one of the parties, who would be affected by the Will coming into effect, challenged it on one ground or the other, the process of succession could not go forward without determination of the dispute regarding the Will. The Hon'ble Apex Court further observed that any and all delays in judicial processes should be avoided and minimized to the largest extent possible, and should generally be, and are rightly frowned upon.

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27. The plaintiff in a partition suit many times may not be aware of all the properties sought to be partitioned of the common ancestral properties and if during the pendency of the case he acquired knowledge about some more properties, which need to be partitioned or included in the partition suit, the amendment to add those properties cannot be refused on technical plea as raised in the present case. It has not been argued that in spite of knowledge of the properties now sought to be added or the correct extents of the property items already included, either wrong description was given or the properties items 6 to 8 were deliberately omitted from addition in the plaint schedule property.

28. Applying the principle as in ***Dinesh Goyal alias Pappu*** (supra), in the present case also, this Court is of the considered view that considering the nature of the suit being for partition, ordinarily, all the properties should be included in the suit schedule to avoid multiplicity of legal proceedings, as also following the principle of law that partition suit must generally include all the properties of the common ancestor, they should weigh over the second part that the trial has commenced. The procedural aspect, cannot override the substantial part. In any case, in the present case, the finding of due diligence has been recorded in favour of the plaintiff so as to allow the amendment application.

29. Considering that in the facts of the case the mistake could be *bona fide* as also that a suit for partition should ordinarily embrace all properties, and delay is not a ground to deny the amendment and that by inclusion of the

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properties sought to be added, no prejudice is going to be caused, as it shall be for the parties to the suit to prove during trial if that property belonged to Pitta Venkata Ratnam or not in which both the parties will have the opportunity, this Court does not find it a fit case for interference with the impugned Order.

30. For the aforesaid discussion, this Court is not inclined to interfere with the impugned order, which advances the cause of justice. No case for interference is made out in the exercise of the jurisdiction under Article 227 of the Constitution of India, which is not to be invoked in a routine manner.

31. The Civil Revision Petition has no merit and is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

Date: 05.03.2025
Dsr

Note:
LR copy to be marked
B/o
Dsr