REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2008
(Arising out of SLP (C) No. 21014 of 2004)

Rajkumar Gurawara (Dead) Thr. L.Rs. .... Appellant (s)

Versus

M/s S.K. Sarwagi & Co. Pvt. Ltd. & Anr. .... Respondent(s)

JUDGMENT

P. Sathasivam, J.

1) Leave granted.

2) Challenge in this appeal is the order dated 17.08.2004 of the High Court of Andhra Pradesh at Hyderabad in Civil Revision Petition No. 1738 of 2004 whereby the High Court allowed the revision filed by respondent No.1 herein.

3) The brief facts leading to the filing of this appeal are:

On 05.01.1948, the father of the appellant purchased the suit lands at Ayitham Valasa Village, Grividi

Mandal, Vizianagaram, Andhra Pradesh along with some other properties for Rs.9,176/- at a public auction held under the liquidation proceedings in O.P. No. 30 of 1946 on the file of the District Court at Vizianagaram before the Official Liquidator at Vizagpatnam (Visakhapatnam) in the matter of the Indian Companies Act, 1913 and of the Vizianagaram Mining Co. Ltd. in liquidation and the Rajah Saheb and others as creditors in pursuance of the order dated 6.3.1946 passed by the High Court of Madras in O.P. No. 25 of 1946. The suit lands were registered on 30.4.1948 under the Registered Document No. 732 of 1948 in Book I, Volume 346 at pages 147 to 151 in the office of the Registrar at Vizianagaram in favour of the father of the appellant conveying, transferring and assigning all the rights including ownership, possession and interests of Vizianagaram Mining Co. Ltd., i.e., right to mining operations, use and sell the said lands. The mining operations were carried over the said lands in the name and style as M/s Ashwani Rajkumar Mining & Trading Company by the father of the appellant. In 1958, the father of the appellant expired. After the death of father, the appellant was

carrying the mining operations. In 1960, the appellant left Vizianagaram for Jagadalpur because of his other business work. In 2001-2002, the appellant came to know that respondent No.2 - State of Andhra Pradesh, was planning to lease out the said lands for mining operation to other companies. On 22.3.2002, the appellant issued a notice under Section 80 C.P.C. to the State through his counsel asking the State not to give the suit property on lease to any other party and not to interfere with the rights and interest of the appellant over the suit lands. On 8.7.2002, the appellant came to know that respondent No.2-State has invited some companies to take the suit lands on lease against the rights and interest of the appellant. On 20.8.2002, the appellant filed Original Suit No.6 of 2002 in the Court of the Additional District Court, Vizianagaram seeking declaration of his exclusive right to do mining operation, to use and sell over the suit lands against respondent No.2' s infringement of such exclusive right of the appellant over the suit lands. An application of ad-interim injunction was also filed restraining respondent No.2 from ever leasing the suit land to strangers

against the interest of the appellant over the said lands. When the trial was about to close in the said suit, on 11.6.2003, an application under Order 1 Rule 10 CPC was filed by respondent No.1 herein to be added as defendant No.2 in the original suit on the ground that a deed has been executed in its favour by the State leasing the suit lands for mining operations. On 11.7.2003, the said application was allowed by the Additional District Judge and respondent No.1 herein was added as defendant No.2 in the original suit.

Thereafter on 14.10.2003, an application was moved on behalf of respondent No.1 for appointment of a local Commissioner to note the physical features of the suit lands and to file his report. The said application was allowed by order dated 23.10.2003 and a local Commissioner was appointed. On 3.12.2003, the Commissioner inspected the suit lands and filed its report stating that the suit lands were in possession of respondent No.1 and mining operations were carried by it. In December, 2003 itself, the appellant herein moved an application under Order VI Rule 17 C.P.C. for

amendment of the plaint and also consequential relief for possession of the suit lands and for damages trespassing into and carrying on mining operations on the suit lands and the same was allowed on 10.3.2004. Against the said order, respondent No.1 approached the High Court by way of revision petition. By order dated 17.8.2004, the High Court allowed the said revision petition. Aggrieved by the said order, the above appeal has been filed by way of special leave.

4) Heard Mr. Siddharth Luthra, learned senior counsel appearing for the appellants and Mr. A.V. Rangam, learned counsel appearing for respondent No.1 and Mr. Manoj Saxena, learned counsel appearing for respondent No.2.

5) Originally, the appellant/plaintiff filed the suit for declaration of his exclusive right to do mining operation in the suit property. However, after impleadment of M/s S.K. Sarwagi and Company as second defendant (first respondent herein) after closing of the evidence and during the course of argument, the plaintiff filed an application under Order VI Rule 17 read with 151 CPC for amendment of the plaint praying for possession over the plaint schedule mentioned

property from the defendants and for grant of damages of Rs. 5.00 lacs in favour of the plaintiff for their mining operations without consent of the plaintiff in the plaint schedule property. Though the learned Additional District Judge allowed the application for amendment on payment of cost of Rs. 300/- the High Court in a civil revision filed under Article 227 of the Constitution of India set aside the same and dismissed the application for amendment which is the subject matter in this appeal. In order to consider whether the appellant/plaintiff has made out a case for amendment of his plaint, it is useful to refer 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:
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> 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."

The first part of the rule makes it abundantly clear that at any stage of the proceedings, parties are free to alter or

amend their pleadings as may be necessary for the purpose of determining the real questions in controversy. However, this rule is subject to proviso appended therein. The said rule with proviso again substituted by Act 22 of 2002 with effect from 01.07.2002 makes it clear that after the commencement of the trial, no application for amendment shall be allowed. However, if the parties to the proceedings able to satisfy the court that in spite of due diligence could not raise the issue before the commencement of trial and the court satisfies their explanation, amendment can be allowed even after commencement of the trial. To put it clear, Order VI Rule 17 C.P.C. confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings on such terms as may be just. Such amendments seeking determination of the real question of the controversy between the parties shall be permitted to be made. Pre-trial amendments are to be allowed liberally than those which are sought to be made after the commencement of the trial. As rightly pointed out by the High Court in the former case, the opposite party is not prejudiced because he will have an

opportunity of meeting the amendment sought to be made. In the latter case, namely, after the commencement of trial, particularly, after completion of the evidence, the question of prejudice to the opposite party may arise and in such event, it is incumbent on the part of the Court to satisfy the conditions prescribed in the proviso.

6) With this background, let us consider the application filed by the plaintiff and the orders passed by the District Court as well as the High Court. We have already stated that originally the suit was filed against the sole defendant and subsequently the second defendant came on record as per the order dated 11.07.2003. It is the case of the plaintiff that he is the absolute owner of the suit schedule lands. It is not in dispute that prior to filing of the suit, notices were exchanged between the parties. In their reply dated 18.8.2001 to the plaintiff's notice, it was specifically asserted that the first respondent herein, namely M/s S.K. Sarwagi & Co. Pvt. Ltd. is carrying on mining activities in the suit schedule lands. The perusal of the reply notice issued by D-2 to the plaintiff, which has been extracted by the High Court in the impugned order,

clearly shows that the plaintiff was made known that the suit lands were in possession of D-2 having taken them on lease from the Government. With the said information in the reply notice about the mining being carried on by D-2, the plaintiff filed the said suit without impleading him for possession and damages.

7) The other relevant fact to be noted is the plea taken in the written statement filed by D-1 wherein, it is specifically stated that the suit schedule lands are classified as poramboke lands in survey and settlement operations and that the Government issued G.O. Ms. No. 459 (Industries and Commerce) Department, dated 28.11.1998 leasing out an extent of 18.35 hectares of land covered under Survey Nos. 106 and 107 of Ayitham Valasa Village in favour of A.P. Mineral Development Corporation for mining purpose for twenty years. It is further averred that the Government in G.O. Ms. No. 102 (Industries and Commerce) Department, dated 20.2.2001 issued Orders transferring the mining lease held by A.P. Mineral Development Corporation in favour of M/s Sarwagi and Co. Pvt. Ltd. for the unexpired period of

lease, i.e. upto 1.6.2019. As rightly observed by the High Court, it is explicit from the written statement filed by D-1 that the plaintiff was made known of the fact that the Government issued order transferring mining lease held by A.P. Mineral Development Corporation in favour of M/s Sarwagi and Co. P. Ltd. (D-2) and the leased lands are in possession and enjoyment of M/s Sarwagi & Co. P. Ltd. As rightly pointed out by the learned counsel for the contesting respondent, in spite of the plaintiff being put in knowledge of the act of the person in possession of the suit property did not chose to implead the said M/s Sarwagi & Co. P. Ltd. (D-2) which came on record on its own application as D-2 in the suit. It is clear that in spite of reply notice and specific plea taken in the written statement of D-1, the plaintiff did not chose to take steps to get the plaint amended suitably and instead allowed the suit to go on and examined the witnesses on his behalf and cross-examined the witnesses produced by the defendants. Only during the stage of arguments, the plaintiff came up with an application under Order VI Rule 17 seeking amendment of the pleadings. We have already

explained the implication of proviso to Rule 17. Though even after commencement of the trial, parties to the proceeding are entitled to seek amendment, in the light of the factual details such as clear information in the reply notice prior to the filing of the suit and specific plea in the written statement of D-1 which contained details of Government Orders leasing out the suit property in favour of D-2, the action of the plaintiff at the stage of argument can not be permitted. Admittedly, the plaintiff failed to adhere to the said recourse at the appropriate time. Further it is relevant to point out that in the original suit, the plaintiff prayed for declaration of his exclusive right to do mining operations and to use and sell the suit schedule property and in the petition filed during the course of the arguments, he prayed for recovery of possession and damages from the second defendant. It is settled law that the grant of application for amendment be subject to certain conditions, namely, (i) when the nature of it is changed by permitting amendment; (ii) when the amendment would result introducing new cause of action and intends to prejudice the other party; (iii) when allowing amendment application defeats

the law of limitation. The plaintiff not only failed to satisfy the conditions prescribed in proviso to Order VI Rule 17 but even on merits his claim is liable to be rejected. All these relevant aspects have been duly considered by the High Court and rightly set aside the order dated 10.3.2004 of the Additional District Judge.

8) In the result, we find no merit in the appeal and the same is dismissed. There shall be no order as to costs.

.....J.
(Dr. Arijit Pasayat)

.....J.
(P. Sathasivam)

New Delhi;
May 14, 2008.