

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.1202 of 2015

ORDER:

This Civil Revision Petition is filed challenging the order

dt.20-01-2015 in I.A.No.612 of 2014 in O.S.No.933 of 2012 of the

I Additional Senior Civil Judge, Guntur.

2. The petitioner herein is plaintiff in the suit. She filed the suit for declaration of her title to the plaint schedule property and for a consequential injunction restraining the respondents from interfering with her peaceful possession and enjoyment of the plaint schedule property.

3. Written statements were filed, trial commenced and evidence of P.W.1 was concluded. Chief-examination affidavit of P.W.2 was also filed.

4. At this stage, I.A.No.612 of 2014 was filed by petitioner seeking amendment of plaint invoking Order VI Rule 17 C.P.C. contending that link document was in the custody of one Koduru Claramma, W/o.Samuel and it is a Will executed by one Yellamati Yesobu, S/o.Samuel in respect of Ac.0.52 cents in D.No.442/1A of

Pathareddypalem of Chebrolu Mandal in favour of Banala Marthamma, W/o.Peda Bhushanam and also daughter of Yellamati Yesobu. He contended that on receipt of summons, the said Claramma attended before the Court and produced the Will

dt.10-01-1973 and it was also marked as Ex.X-1 and therefore it is essential to permit the petitioner to amend the plaint to insert the pleading regarding the said Will.

5. Counter affidavit was filed by 2nd respondent, which was adopted by other respondents opposing this amendment and contending that the trial had already commenced and application for amendment therefore is not permissible. It was also contended that although Claramma had given an affidavit in lieu of chief-examination as P.W.2, she did not come for cross-examination and therefore her evidence has been eschewed.

6. By order dt.20-01-2015, the Court below dismissed the said application. It held that petitioner ought to have taken steps to amend the plaint before examining P.W.2 as a witness and it is impermissible because of proviso to Order VI Rule 17 C.P.C. It further observed that since the Will is referred to in the evidence of P.W.2 and marked in that evidence, once the evidence of P.W.2 is eschewed, it

would be pointless to allow the amendment.

7. Challenging the same, this Revision is filed.

8. Heard Sri J.Prabhakar, learned counsel for petitioner and Sri Mohammad Islamuddin Ansari, learned counsel for respondents.

9. The facts narrated above clearly indicate that the application for amendment by incorporating facts regarding a Will dt.10-01-1973 was filed after the matter was posted for cross-examination of P.W.2. As per proviso to Order VI Rule 17 C.P.C., applications for amendment of plaint after commencement of trial cannot be allowed unless the party seeking amendment satisfies the Court that in spite of due diligence, he could not have raised the matter before the trial commenced. Since the Will dt.10-01-1973 is said to be a link document of plaintiff, plaintiff cannot state that she is not aware of it before the trial commenced. It cannot be said that there is any due diligence on the part of petitioner in not raising the matter before the trial commenced. Also, the said Will dt.10-01-1973 was produced by P.W.2, but she did not appear for cross-examination and her evidence has already been eschewed. Therefore, there is no necessity to now allow the petitioner to amend the plaint to incorporate a reference to the said Will.

10. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No costs.

11. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 20-08-2015

Vsv/*