

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1259 of 2015

ORDER :

This Revision is filed under Section 115 C.P.C. challenging the order dt.18.11.2014 in I.A.No.107 of 2014 in O.S.No.279 of 2010 on the file of II Additional Junior Civil Judge, Tadepalligudem.

2. The petitioners herein are plaintiffs in the above suit.

3. They filed the suit for a perpetual injunction restraining the respondents from interfering with their possession and enjoyment of the plaint schedule property.

4. Written statement was filed by respondents opposing the suit claim.

5. Thereafter, I.A.No.107 of 2014 was filed by petitioners contending that on 18.01.2014, the respondents illegally and high-handedly trespassed into the plaint schedule property in part and formed new bunds on the North and East sides of plaint schedule property and encroached an extent of approximately Ac.0.24 cents; therefore, the respondents are trespassers, and are liable to be evicted therefrom; and body of the plaint as well as in the prayer part may be allowed to be amended

by allowing petitioners to such eviction of respondents from the alleged encroached area of Ac.0.24 cents.

6. This application was opposed by respondents who filed a counter contending that earlier an Advocate-Commissioner was appointed; subsequently, another application for appointment of a second Advocate-Commissioner has been filed, but in that application no orders have been passed and no report has been submitted thereon; and therefore, the application to amend the plaint cannot be maintained at this stage; that the petitioners can file fresh application for amendment of the plaint after the second Advocate-Commissioner's report is filed in the Court to prove their case.

7. By order dt.18.11.2014, this application was dismissed by the Court below. It accepted the contention of the respondents that unless the application for appointment of the second Advocate-Commissioner is allowed and the extent of encroachment, if any, is determined, there is no necessity to amend the plaint.

8. Challenging the same, the present Revision is filed.

9. The counsel for petitioners contended that the ground on which the Court below dismissed I.A.No.107 of 2014 is untenable; the petitioners are entitled to seek amendment of the plaint in view of the subsequent events; that this does not alter the nature of suit in any manner;

and to hold that unless the extent of encroachment is determined through an Advocate-Commissioner, the application for amendment of plaint cannot be allowed, is perverse and unsustainable.

10. On the other hand, the counsel for respondents refuted the above contentions and contended that the application filed by petitioners for amendment of the plaint is not maintainable and is pre-mature; and unless the second Advocate-Commissioner determines the extent of encroachment, application for amendment of plaint cannot be made.

11. I have noted the submissions of both sides.

12. There is no dispute that the suit was initially filed seeking a perpetual injunction restraining the respondents from interfering with the possession and enjoyment of petitioners in respect of plaint schedule property. According to petitioners, after filing of the suit, the respondents have trespassed into a portion of the plaint schedule property and are in occupation of the same, and therefore, they are being forced to file an application seeking amendment of the plaint setting out the subsequent events and seeking the relief of eviction also in respect of the encroached portion.

13. In **Adusumilli Venkateswar Rao and another v.**

Chalasani Hymavathi^[1], this Court held that a suit for

perpetual injunction can be amended into a suit for possession, and by such amendment there will be no change in the cause of action if such amendment is permitted.

14. In **Rajesh Kumar Agarwal and others v. K.K. Modi and others**^[2], the Supreme Court held that if a cause of action arose during the pendency of the suit, amendments to pleadings ought to be granted since it would not change the basic structure of the suit and would only result in a change in the nature of the relief claimed. This principle was also reiterated by this Court in **Sanapala Ramanujulu alias Ramanuja Charuylu v. Sanapala Sridhrudu (died) and others**^[3].

15. It is settled law that without a pleading no amount of evidence can be looked into. Therefore, without permitting the petitioners to amend the pleading, no evidence of the alleged encroachment on the basis of any Advocate-Commissioner's report can be looked into. It is also settled law that while deciding whether or not to allow the amendment, the correctness of the case set-up in the amendment cannot be gone into. The trial court has ignored the above principles of law and erred in dismissing I.A.No.107 of 2014 filed by petitioners.

16. Therefore, the order dt.18.11.2014 in I.A.No.107 of 2014 in O.S.No.279 of 2010 on the file of II Additional

Junior Civil Judge, Tadepalligudem is allowed.
Accordingly, the Revision is allowed. No order as to costs.

17. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-07-2015

Ndr/*

[\[1\]](#) AIR 1990 AP 161

[\[2\]](#) AIR 2006 SC 1647

[\[3\]](#) 2014 (2) ALD 365