

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

C.R.P.No.541 of 2014

ORDER:

Heard Sri K.Ravi Mahender, learned counsel for the petitioner and Sri Nivarthi M.S. learned counsel for the respondent.

2. This Revision Petition is filed challenging the order dt.03-01-2014 in I.A.No.410 of 2013 in O.S.No.807 of 2011 of the II Senior Civil Judge, City Civil Court, Hyderabad.

3. Petitioner herein is the defendant in the said suit filed by the respondent for recovery of possession, mesne profits etc. in respect of property within certain specified boundaries described in the plaint in the suit.

4. Written Statement was filed by the petitioner opposing the suit claim. Issues were framed and then affidavit in lieu of chief examination of P.W.1 was filed. Cross examination of P.W.1 was to commence. At that stage, respondents filed I.A.No.410 of 2013 to amend the plaint by mentioning different boundaries from those mentioned earlier stating that on account of inadvertence and over sight, incorrect boundaries were mentioned in the plaint schedule.

5. Counter was filed opposing the said

application by the petitioner contending that there is negligence on the part of the respondent while drafting the plaint and if the amendment is allowed, it would convert the suit into a suit for recovery of possession of totally different property and causes prejudice. It is also contended that the trial had already commenced and in view of proviso to Order 6 Rule 17 CPC, the application for amendment cannot be entertained.

6. By order dt.03-01-2014, the Court below allowed the said application. It held that the respondent is a wakf institution having several properties and due to typographical error i.e. cut, copy and paste system from the computer, the mistake occurred and since it was found only when P.W.1 was preparing to face cross examination by the petitioner, the application deserved to be allowed and no prejudice would be caused to the petitioner. It further held that nature of the suit is also not going to change. It also mentioned that in the Written Statement filed by him, the petitioner never took a plea that the boundaries of the suit schedule land premises were shown incorrectly. It however directed costs to be paid to the petitioner.

7. Challenging the same, this Revision Petition is filed.

8. Learned counsel for the petitioner contended that the Court below erred in allowing the

application for amendment of the plaint by substituting totally new boundaries in the place of boundaries earlier indicated in the plaint; this would turn the suit into one for recovery of the totally different property; and in any event, the application could not have been entertained after trial has commenced since due diligence has not been established. He placed reliance on the judgment of the Madras High Court reported in **Loganathan Vs. Kaliappa Gounder**^[1].

9. Learned counsel for the respondent on the other hand supported the order passed by the Court below and relied upon the judgment of this Court in **Pattan Babu Khan Vs. Thummala Seshi Reddy**^[2].

10. I have noted the submissions of both sides.

11. It is no doubt true that the application seeking amendment of plaint was filed when the matter was coming up for cross examination of P.W.1. In my considered opinion, substitution of new boundaries to the property, described in the plaint schedule originally, does not alter the nature of the suit. Therefore, the contention of the learned counsel for the petitioner that it changes the nature of the suit cannot be accepted. The reason given for seeking substitution in the institution of boundaries in the affidavit filed in support of this I.A. was that when P.W.1 was preparing for cross examination and went

through the contents of the plaint, he discovered that the plaint schedule property as described in the plaint had incorrect boundaries, and that this happened by oversight and inadvertence.

12. In my considered opinion, no prejudice would be caused to the petitioner, if the application for amendment is allowed since the cross examination of P.W.1 has not yet commenced; and the petitioner would be allowed to file an additional Written Statement or an amendment to the Written Statement already filed by him taking appropriate defences and the trial would then be conducted in accordance with law.

13. In **Loganathan** (1 supra), application for amendment of plaint has been filed after the evidence of P.W.1 was concluded and therefore, the Court on the facts of that case, took a view that the plaintiff has not exercised due diligence and proviso to Order 6 Rule 17 CPC barred the Court from entertaining the application.

14. In the present case, the evidence of P.W.1 had not been concluded and in fact, cross examination has not even commenced. The amendment sought for in my opinion is imperative and proper and for effective adjudication of the case and in my opinion, the application for amendment cannot be said to be not *bona fide*. The petitioner has also been compensated in terms of costs and refusing amendment would in fact lead to injustice or

multiplicity of proceedings. The proposed amendment does not also change the nature and character of the case.

15. In **Pattan Babu Khan** (2 supra), this Court held that the Supreme Court had laid down the following tests for deciding whether or not application for amendment should be allowed, and observed:

“(1) Whether the amendment sought is imperative for proper and 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 multiple 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 amended claims would be barred by limitation on the date of application.”

The Supreme Court, however, clarified that the above principles were illustrative and not exhaustive. It further held that the parties to the suit are permitted to bring forward amendment of the pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them and that the Courts have to be liberal in accepting the same if such

application for amendment is made prior to the commencement of the trial and that 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 the trial. It followed **Abdul Rehman and another v. Mohd. Ruldu and others**^[3], wherein the Supreme Court held:

"All amendments which are necessary for the purpose of determining real questions of controversy between the parties should be allowed if it does not change the basic nature of the suit. A change in the nature of relief claimed shall not be considered as a change in the nature of suit and the power of amendment should be exercised in the larger interests of doing full and complete justice between the parties."

16. In view of the above decisions, I am of the view that there is no error of jurisdiction committed by the Court below in allowing the application for amendment filed by the respondent.

17. Accordingly, the Civil Revision Petition is dismissed. No costs.

18. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-08-2015

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[\[1\]](#) LAWS (MAD)-2005-6-page 12=2005 (3) MLJ 294

[\[2\]](#) 2015 (2) ALT 697

[\[3\]](#) 2013 (1) ALD 1 (SC)