

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

C.R.P.No.2742 of 2014

ORDER:

This Revision Petition is filed challenging the order dt.14-07-2014 in I.A.No.319 of 2014 in O.S.No.708 of 2011 of the III Additional Senior Civil Judge, Kakinada.

2. Petitioners herein are defendants in the suit. The respondents-plaintiffs filed the above suit for a perpetual injunction restraining the petitioners from interfering with their alleged peaceful possession and enjoyment of the plaint schedule property.

3. Pending the suit, the respondents filed I.A.No.319 of 2014 in O.S.No.708 of 2011 under Order 6 Rule 17 CPC:

a) to convert the suit for perpetual injunction into a suit for declaration of title of respondent Nos.2 to 4 over the plaint 'A' schedule property i.e. 'ABCDEFGG, G1, HIJKLA' portion of the plaint plan in which the plaint 'B' schedule property i.e. 'EFG, G1, E' portion of the plaint plan is a part; b) Grant consequential permanent injunction restraining the defendants, their henchmen, agents and privies from interfering with 2 to 4 plaintiffs' peaceful possession and enjoyment of plaint 'A' schedule property i.e. 'ABCDEFGG, G1, HIJKLA' portion of the plaint plan; c) Evict the defendants from plaint 'B' schedule property i.e. 'EFG, G1,

E' portion of the plaint plan along with illegal constructions and deliver vacant possession to 2 to 4 plaintiffs; d) pass decree for the suit amount of Rs.2,00,000/- with subsequent interest e) Award future profits over plaint 'B' schedule property i.e. 'EFG, G1, E' portion of the plaint plan; O) in para 17, 'paras 17 (b) and 17 (c)' are to be amended as 'paras 17 (f) and 17 (g) and P) Remove the present plaint plan and attach the enclosed plan to this petition as plaint plan.

4. In the affidavit filed in support of this application, the 7th respondent contended that in I.A.No.671 of 2011, an order of temporary injunction was granted in their favour and in spite of the said order, before the visit of second advocate commissioner appointed in I.A.No.595 of 2012, petitioners had highhandedly and illegally encroached about 555 sq. yds. of site in item No.2 of the original plaint schedule property and proposed amended plaint B schedule property of which southern portion is shown as EFGG1E in the proposed amendment plan attached to the petition, and made illegal construction of a building of an extent of 100 sq. yds out of 555 sq. yds which is also identified the Advocate Commissioner and Surveyor in I.A.No.595 of 2011. He further contended that the petitioners had highhandedly removed and lifted the earth in plaint B schedule property i.e. E F G G1 E portion of the proposed amended plaint

plan which is worth about Rs.2.00 lakhs and so they are entitled to recover said land value from the petitioners. It is also stated that since the petitioners had denied the title of the respondents in respect of the petition items 1 and 2 of the plaint schedule property, they were advised to seek relief of declaration of title also apart from other reliefs mentioned above.

5. This application was opposed by petitioner Nos.1 and 2. They denied that they had violated the temporary injunction order. They contended that the respondents are intending to introduce a totally new case inconsistent to their original case and also intending to introduce new cause of action. They contended that events mentioned by the respondents are not subsequent to the suit and they claimed that buildings were constructed even prior to the filing of the suit. They contended that the respondents were guilty of gross laches and the amendment cannot be accepted as it amounts to changing the fundamental character of the suit. They stated that just before commencement of trial, this application has been filed by the respondents who have slept for two years and they have not given proper explanation for not filing these objections earlier.

6. By Order dt.14-07-2014, the Court below allowed the application for amendment. It observed that the trial in the suit has not yet commenced and the objection raised by the petitioners that there was

negligence on the part of the respondents in filing application for amendment earlier is not a ground to refuse amendment of a plaint. It observed that if the plaint is amended, the petitioners would get an opportunity to amend the written statement or file an additional written statement and that the amendment of the plaint would avoid multiplicity of proceedings. It also observed that merely because the respondents are permitted to add new reliefs, such reliefs will not be automatically granted by the Court without a proper trial.

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

8. Learned counsel for the petitioners contends that the proposed amendments alters the nature of the suit and therefore they cannot be permitted. He reiterated the stand taken in the counter filed by the petitioners in the Court below.

9. Learned counsel for the respondents however supported the order passed by the Court below and placed reliance on the judgment of the Supreme Court in **Sampath Kumar Vs. Ayyakannu and another**^[1].

10. In the present case, admittedly the trial in the suit has not commenced. The suit was originally filed for perpetual injunction, but subsequently, in view of a denial

of title of the respondents by the petitioners and due to alleged encroachment by the petitioners in respect of the properties allegedly in the possession of the respondents, the application I.A.No.319 of 2014 was filed.

11. The question whether the suit for perpetual injunction can be converted into a suit for declaration of title and recovery of possession has been considered by the Supreme Court of India in the above judgment. The Apex Court held that by permitting the amendment of the plaint as sought by the plaintiff, the basic structure of the suit is not altered and if it was open to the plaintiff to file a fresh suit, there is no reason why the same relief, which could be prayed for in a new suit, cannot be permitted to be incorporated in the pending suit. It observed that allowing the amendment would curtail multiplicity of proceedings. It held that mere delay in seeking amendment would not be a ground for refusing the amendment if the amendment is sought prior to the commencement of the trial and such amendments should be allowed liberally.

12. Therefore the contention of the learned counsel for the petitioners that permitting the respondents to amend the plaint would alter the nature of the suit or the structure of the suit, cannot be accepted.

13. Therefore, I do not find any merit in the Civil Revision Petition and the same is accordingly dismissed.

No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-06-2015

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[\[1\]](#) 2002 (6) ALD 63 (SC)