

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.3263 of 2013

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.19.03.2013 in I.A.No.982 of 2012 in O.S.No.146 of 2004 on the file of the Andhra Pradesh State Wakf Tribunal, Hyderabad.

2. The petitioner herein is the defendant in the said suit.
3. The respondent herein filed the above suit before the said Tribunal for eviction of petitioner.
4. Written statement was filed by petitioner opposing the suit claim.
5. Issues were framed and trial commenced.
6. Thereafter, the respondent/plaintiff filed I.A.No.982 of 2012 to amend the plaint schedule contending that instead of giving boundaries of suit Mulgi which is in occupation of petitioner, inadvertently boundaries of entire Wakf property including the suit Mulgi were mentioned in the plaint and so the plaint schedule requires to be amended to confine the boundaries only to the Mulgi in question.
7. The petitioner filed a counter opposing the said amendment contending that the amendment would give rise to a new case and, in effect, amounts to substitution of one property in the schedule with another property, which is not permissible.
8. By order dt.19.03.2013, the Court below allowed the application

for amendment holding that in the plaint by mistake the boundaries have been wrongly mentioned; that the boundaries given therein were of the entire Wakf Institution whereas in the amendment the respondent had sought to mention only the boundaries of the disputed Mulgi; that this mistake is bonafide; and on account of mistake of counsel, the party shall not suffer.

9. Challenging the same, this Revision is filed.
10. The counsel for petitioner would contend that under the proviso to Order 6 Rule 17 CPC once the trial commences amendments cannot be allowed; and that since the trial has commenced and PW.1 has already been examined in part, if amendment of plaint is now permitted, it would further delay the disposal of the suit.
11. It is not disputed by counsel for petitioner that the boundaries mentioned in the original plaint include the Mulgi which is the subject matter of dispute between the parties. No doubt, the plaint schedule was drafted negligently by not confining the same to the Mulgi in question, but including other area also. However, it would not make much of a difference to petitioner/defendant because in any event, the Mulgi in question will any way be covered in the schedule to original plaint.
12. It is no doubt true that Order 6 Rule 17 restricts the power of the Court to permit an amendment after the trial commenced unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before commencement of trial. So amendments sought after the trial has commenced, cannot normally be allowed unless the condition prescribed above is fulfilled.

13. In the present case, the respondent/plaintiff has contended that he did not have the copy of plaint with him, that it was with his earlier counsel and only after counsel was changed, he noticed the error in the schedule to property in the plaint. Therefore, in the peculiar facts and circumstances of the case, since the boundaries to property indicated in the original plaint also cover the boundaries of Mulgi in question, I am of the opinion that this is not a fit case to exercise jurisdiction under Article 227 of the Constitution of India and set aside the order passed by the Court below. Therefore, the Revision fails and is accordingly dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 05-06-2015

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