

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

CIVIL REVISION PETITION No.1618 of 2010

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ORDER:

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This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.03-03-2010 in I.A.No.219 of 2010 in O.S.No.1501 of 2009 of the III Additional Junior Civil Judge, Ranga Reddy District.

2. The petitioner herein is plaintiff in the above suit. He filed the suit against respondents for perpetual injunction restraining them from interfering with his alleged peaceful possession and enjoyment of the plaint schedule property.
3. In the plaint schedule, the survey number of the property was mentioned as 177/4 of Nallagandla village, Serilingampally Municipality, R.R.District.
4. Written statement was filed by respondents pointing out that the plaint schedule is not correct.
5. Issues were framed, trial commenced. The petitioner got himself examined as P.W.1 on 27-01-2010 and he was cross-examined on 03-02-2010.
6. On 11-02-2010 the petitioner filed I.A.No.219 of 2010 under Order VI Rule 17 CPC to permit him to correct the survey number mentioned in the plaint and the plaint schedule as 177/A in the place of 177/4.

7. In the affidavit filed in support of the said application it is stated that this error was noticed only recently and he was advised by his counsel to rectify it.
8. Counter affidavit was filed by respondents opposing the amendment to the plaint. It was pointed out that in the written statement a specific plea was taken that the description of the property in the plaint differs from the description thereof in the sale deed under which the petitioner had purchased it and that in spite of the same, no steps were taken by petitioner. Since the suit was coming up for further evidence, the respondents contended that at the belated stage, the petitioner cannot be permitted to amend the plaint.
9. By order dt.03-03-2010, the Court below dismissed I.A.No.219 of 2010 on the ground that it had been filed belatedly after commencement of trial. It held that the petitioner did not state what prevented him from filing application for amendment before the trial commenced.
10. Challenging the same, this Revision is filed.
11. Heard Sri N.Ashok Kumar, learned counsel for petitioner. The learned counsel for petitioner contends that the error sought to be corrected is a minor error; that it was noticed by petitioner late; and no prejudice would be caused to respondents if petitioner is allowed to correct the error. He also contended that the purpose of permitting amendments is to enable the real question in controversy between the parties to be determined and since the prayer for amendment is a *bonafide* one, the Court below erred in dismissing I.A.No.219 of 2010.

12. Notice to respondent Nos.1, 2 and 4 was returned with endorsement "unclaimed". So, they are deemed to be served. None appears for 3rd respondent though notice has been served on 3rd respondent.

13. In the present case, the petitioner had examined himself in chief on 27-01-2010 and he was cross-examined on 03-02-2010. I.A.No.219 of 2010 seeking amendment of the plaint was filed on 11-02-2010 i.e. after trial commenced.

14. Order VI Rule 17 CPC states :

"17. Amendment of pleadings.- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

15. In **Usha Balashaheb Swami and others Vs. Kiran Appaso Swami and others**, the Supreme Court held :

"17. From a bare perusal of Order 6 Rule 17 of the Code of Civil Procedure, it is clear that the court is conferred with power, at any stage of the proceedings, to allow alteration and amendments of the pleadings if it is of the view that such amendments may be necessary for determining the real question in controversy between the parties. The proviso to Order 6 Rule 17 of the Code, however, provides that no application for amendment shall be allowed after the trial has commenced unless the court comes to a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

16. Thus, the power of the Court to allow amendments has been curtailed by the Parliament and unless the party seeking amendments satisfies the Court that in spite of due diligence he

could not have raised the matter before commencement of trial, the amendment cannot be allowed.

17. In the affidavit filed in support of I.A. No.219 of 2010, no such explanation is forthcoming from the petitioner. He merely stated that he had not noticed the mistake earlier and had noticed it only when he was filing his chief-examination affidavit. Therefore, the petitioner cannot be said to have fulfilled the condition precedent for exercise of jurisdiction to permit amendment of plaint after the trial is commenced. Therefore, the trial Court cannot be said to have erred in dismissing the said I.A.
18. Therefore, I do not find any merit in the Revision and the same is accordingly dismissed. No costs.
19. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 10-06-2015

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