

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

**FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

THURSDAY, THE SECOND DAY OF APRIL TWO THOUSAND AND FIFTEEN

Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

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CIVIL REVISION PETITION No.705 of 2015

Between:

Chintalapuri Buchemma,
W/o. Late Subbaiah,
R/o. Ganganapalli Village,
Narpala Mandal,
Anantapuram District & 2 others

.. Petitioners

AND

Gandlaparthy Rama Krishna Reddy,
S/o. G. Chinna Konda Reddy,
Gandlaparthy Kothapalli, Rapthadu Mandal,
Anantapuram District & 5 others

.. Respondents

The Court made the following:

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HON'BLE SRI JUSTICE P.NAVEEN RAO
CIVIL REVISION PETITION No.705 of 2015

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ORDER:

Preliminary decree was passed in O.S.No.14 of 2008, filed by the first respondent, on 30.06.2008. In the said suit, I.A.No.206 of 2008 is filed for appointment of Advocate Commissioner to carry out the measurements of the land and identification of the boundaries. At that stage, the petitioners herein filed I.A.No.1021 of 2012 to implead as respondents 7 to 9 in I.A.No.206 of

2008. The said impleadment petition was allowed on 25.09.2012. Along with the implead petition, the petitioners have also filed counter affidavit, which was taken on record. Challenging the order of the Court below in I.A.No.1021 of 2012, C.R.P.No.6041 of 2012 is filed before this Court, which was dismissed on 24.07.2014. The petitioners herein filed I.A.No.1242 of 2014 praying to amend the counter filed in I.A.No.206 of 2008. The petitioners intend to amend para 5(a) of the counter affidavit. Considering the rival contentions, the Court below dismissed the I.A.No.1242 of 2014 holding that the claim made by the petitioners in the I.A. for amendment of the counter filed is not maintainable.

2. What was the original amendment made in the counter affidavit was not placed before this Court. However, as seen from the petition, the amendment proposed relates to the claim that the husband of the 6th respondent purchased Item No.12 of the suit schedule property on 12.05.1978 and thereafter, he has been in continuous possession and enjoyment, which was within the knowledge of the plaintiff. This fact is sought to be brought on record by way of this amendment. For the first time, the first petitioner sought to bring on record the fact that the father of petitioners 2 and 3 purchased the property on 12.05.1978 and since then they are in possession and enjoyment of the said property. It is not stated as to why the 1st petitioner was not aware of said fact when they filed application for impleadment and the counter affidavit and is subsequently discovered. The principle of law is well settled that if a person seeks to amend the pleadings, the burden lies on him to establish that he was not aware of the fact originally when the affidavit was filed and only subsequently the fact was discovered. Having considered the rival contentions and having found that the claim of the petitioners is not valid, the same was dismissed by the Court below. I see no error in the decision arrived at by the Court below warranting interference by this Court.

3. Hence, the Civil Revision Petition is dismissed. However, it is made clear that any observations made in the order of the Court below in I.A.No.1242 of 2014 do not come in the way of the contentions to be urged in the main I.A.No.206 of 2008 in O.S.No.14 of 2008. It is needless to observe that it is

always open to the petitioners to work out their remedies available in law. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

P.NAVEEN RAO, J

Date: 2nd April, 2015

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HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.705 of 2015

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Date: 2nd April, 2015

