

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

CIVIL REVISION PETITION No.3956 of 2014

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ORDER:

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This Civil Revision Petition is filed challenging the order

dt.10-09-2014 in I.A.No.417 of 2014 in O.S.No.60 of 2010 of the Principal Junior Civil Judge at Huzurabad allowing the application for amendment of plaint filed by 1st respondent by substituting "Sy.No.811/4" in the place of "Sy.No.811" and substituting the name of "Kota Laxma Reddy and Ram Gopal Reddy" in place of "Kemshireddy Laxma Reddy and Kemshireddy Ram Gopal Reddy" and the registered "Doc.No.3386 of 1980" in the place of "1386 of 1980".

2. The 1st respondent is plaintiff in a suit for injunction and she sought an injunction in respect of extent Ac.0.30 gts of land within the specified boundaries in Sy.No.811.

3. Written statement was filed by petitioner and respondent Nos.2 to 6 opposing the suit claim.

4. Thereafter issues were framed. At that stage, I.A.No.417 of 2014 was filed by 1st respondent seeking

the above amendments.

5. This application was opposed by petitioner and respondent NOs.2 to 7 contending that there is no typographical mistake as alleged and the amendment sought for cannot be ordered.

6. By order dt.10-09-2014, the Court below allowed the said application. It held that in the case on hand, the amendment sought with regard to survey number, document number and names of vendors of 1st respondent are liable to be allowed since 1st respondent had not sought to amend the entire suit schedule property and that the documents already on record prove these facts.

7. Challenging the same, this Revision is filed.

8. The learned counsel for petitioner contended that once issues are framed and trial had commenced, applications for amendment cannot be allowed. He placed reliance on the judgments in **Ramoji Rao and another** Vs. **M.A.E. Kumar Krishan Varma and another**^[1], **J.Samuel and others** Vs. **Gattu Mahesh and others**^[2], **Angati Tatayya** Vs. **Vakada Sanyasirao**^[3] and **Ayesha Rizwana** Vs. **Mushtaq**

Ahmed^[4].

9. In **Ramoji Rao** (1 supra), no doubt a view has been taken that once issues are settled, the trial is said to have commenced. But in **Ajendraprasadji N. Pande and another Vs. Swami Keshavprakeshdasji N. and others**^[5], the Supreme Court has held that either the date of settlement of issues or the date of filing affidavit in lieu of chief-examination, can be taken as the date of commencement of trial.

10. In the present case, admittedly the chief-examination affidavit on the side of plaintiffs has not filed. In **Pradeep Singhvi and another Vs. Heero Dhankani and others**^[6], the Supreme Court observed:

“4. Of course, by the time the defendants moved an application for amending the written statement, the trial had commenced but the proposed amendment, if allowed, would not have irreparably prejudiced the plaintiffs. At the most, the plaintiff would have been re-examined. We do not think that the trial court was justified in refusing the prayer for amendment in written statement which would have the effect of excluding the defendants from raising a plea material for their defence.”

11. Therefore in my considered opinion, since affidavit in lieu of chief-examination of 1st respondent/plaintiff has not

yet been filed, the trial cannot be said to have commenced and in any event amendment of pleadings of the nature sought by 1st respondent would not alter the nature of suit and no prejudice is caused to petitioner and other respondents.

12. In **J.Samuel** (2 supra), the Supreme Court has observed that claim for typographical error seeking for amendment in a suit for specific performance cannot be accepted. In my considered opinion, the said decision turned on the facts therein and in that case application for amendment of the plaint was filed at the stage of arguments in the suit when the matter was posted for judgment. Therefore the said judgment is of no assistance to the learned counsel for petitioner.

13. In **Muthukur Gram Panchayat, SPSR Nellore District Vs. Kakuturu Ramesh Reddy and others**^[7], this Court has expressed a view that after commencement of trial, the application for seeking prayer in the plaint seeking declaration that plaintiffs' easementary rights to pass through the land in question, cannot be allowed. In the said case, application for amendment was filed after the trial has commenced. Therefore, the said decision is not of any assistance to the learned counsel for petitioner.

14. In **Angati Tatayya** (3 supra) also, after chief-examination affidavit was filed and the case was coming up for cross-examination, after taking several adjournments, the application for amendment of plaint schedule was filed. Therefore, on the facts of the said case, the Court was justified in refusing to allow the amendment.

15. In **Ayesha Rizwana** (4 supra) also application for amendment of plaint was filed after the evidence of P.W.1 was concluded and evidence of P.W.2 had commenced and therefore even on the facts of that case, the conclusion that after trial has commenced, was correct.

16. None of these cases apply to the present case where admittedly only issues are framed and even chief-examination affidavit of 1st respondent/plaintiff was also not filed.

17. Therefore, I agree with the trial Court that 1st respondent is entitled to seek the relief of amendment of plaint and the amendment sought for by her do not cause any prejudice and may be allowed.

18. Therefore, I do not find any merit in the Revision and it is accordingly dismissed. No costs.

19. As a sequel, miscellaneous petitions pending if any,
in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 14-08-2015

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[\[1\]](#) 2012(1) ALT 644

[\[2\]](#) (2012) 2 SCC 300

[\[3\]](#) 2012(6) 450

[\[4\]](#) 2013(6) ALD 115

[\[5\]](#) (2006) 12 SCC 1

[\[6\]](#) (2004) 13 SCC 432

[\[7\]](#) 2014(1) ALD 444