

HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No. 5785 of 2015

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DATE: 31.12.2015

Between:

K V Siva Sankar S/o K V Siddappa

R/o Hindupur road,

Madakasira,

Anantapur district

.... Petitioner

And

Smt K N Vannamma W/o late Narayanappa

R/o Madikasira, Anantapur and others

.... Respondents

This Court made the following :

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ORDER:

Petitioner is plaintiff in O S No. 113 of 2008. He filed I A No. 123 of 2014 under Order 6 Rule 17 CPC seeking amendment of the plaint. On elaborate consideration of the contentions of the petitioner and principles of law on the subject, the Court below dismissed the petition.

2. The suit is of the year 2008. Written statement was filed by the defendant in the year 2009 disputing the claim of the plaintiff and stating that the plaintiff schedule property does not contain the boundaries and plaintiff schedule is not capable for identification. In the cross examination of PW.1 also this question was specifically posed and he says that petitioner-plaintiff does not know the boundaries of the suit property. Evidence recorded long ago, written submissions were also filed and at the stage of pronouncement of judgement, petitioner filed this application seeking amendment of plaint to bring in the boundaries of the suit schedule properties. On detailed consideration of the matter, I.A was dismissed.

3. Learned counsel for petitioner placing reliance on the decision of the this Court in **P DURGA REDDY Vs B.YADI REDDY**^[1] contended that even at this stage, it is permissible to amend the plant, amendment of the plaint would not cause any prejudice to the defendants and Trial Court ought to have allowed the petition filed by the petitioner. Learned counsel drawn the attention of the Court to para 9 of the judgment, which reads as under:

“9. The law succinctly laid down from the expressions is that the requirement of satisfying the due diligence concept for the trial once commenced and in particular for post trial amendment is a mandatory requirement being a pre-requisite, besides the other

considerations, where the amendment is necessary to resolve the real controversy and where does not cause grave prejudice or injustice to the other side and where it does not alter the cause of action or inconsistent to the existing material in the pleadings on record. It can be allowed where the amendment is necessary to explain the material on record.”

4. Plaintiff should be diligent in projecting his case properly and make all pleadings necessary in support of the relief sought. The provision contained in Order 6 Rule 17 of CPC, enables trial Court to permit amendment of the plaint in the facts of given case, provided such amendment would not cause prejudice to the other party and such application was made at early stage of the suit. In the instant case, the suit was instituted in the year 2008 and as early as in the year 2009 objection was taken by defendants on maintainability of the claim. In the cross examination, this objection was specifically raised and deposition show admission of the factum of not disclosing the boundaries. At least at that stage plaintiff ought to have been diligent. At the fag end of the case, when the matter is at the stage of passing judgment, the petition for amendment of plaint cannot be entertained. Quietus to the litigation should be given and this kind of dilatory tactics should not be encouraged. Normally, amendment of the plaint after commencement of trial cannot be allowed, except in exceptional circumstances where if the plaintiff seeking amendment of the plaint, makes out a case that in spite of due diligence he could not cover the aspect and that amendment is necessary. Even in such cases, such a plea can be accepted, if no prejudice is caused to the other side. Even in **P. DURGA REDDY**, the judgment relied upon by the learned counsel for petitioner, this Court held that such amendment should necessarily resolve the real controversy and should not cause prejudice or injustice to the other side and should not alter the cause of action or inconsistency to the existing material.

5. In the instant case, as noticed above, there is no such due diligence exercised by the petitioner. He was sufficiently put on notice of the specific objection. It cannot be said that prejudice would not be caused to other side. Amendment if allowed would alter the cause of action and is inconsistent to the existing material and the pleadings on record. Thus, at this stage permitting the petitioner to amend the pleadings is not in the

interest of justice. I, therefore, do not see any error in the decision of the trial Court warranting interference of this Court.

6. Revision fails and accordingly the same is dismissed.

No costs. Consequently, miscellaneous petitions, if any stand closed.

P.NAVEEN RAO,J

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