

THE HONOURABLE MR JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.12 of 2014

ORDER

This Revision is filed under Article 227 of the Constitution of India challenging the order dated 24.09.2013 in I.A.No.750 of 2012 in O.S.No.17 of 2010 passed by the Senior Civil Judge, Wanaparthy.

2. The petitioners herein are plaintiffs in the suit. They filed the suit against the respondents for mandatory injunction and also for declaration of title.

3. The respondents filed written statement opposing grant of any relief to the petitioners.

4. The Trial commenced and was concluded. The matter was posted for judgment in the suit to 16.06.2015.

5. The petitioners filed I.A.No.750 of 2012 on 13.12.2012 under Order VI Rule 17 CPC to correct the plaint schedule, where according to them the southern and western boundaries were incorrectly mentioned. In the affidavit filed in support of the said application, it was stated that this happened on account of oversight and was purely an accidental slip.

6. Counter affidavit was filed by the respondents opposing the amendment of the plaint. They contended that the evidence on the side of the defendants had also

commenced and at that stage, to fill the gap in the evidence of the petitioners, this I.A. is filed.

7. By order dated 24.09.2013, the Court below rejected the I.A.No.750 of 2012 on the ground that the petitioner had not explained reasons for not taking steps for seeking amendment of the plaint at an earlier point of time and that the trial had already commenced.

8. Challenging the same, this Revision is filed.

9. Learned counsel for the petitioners contended that the Court below ought to have allowed I.A.No.750 of 2012 and permitted the petitioners to amend the plaint; the wrong mention of the boundaries in the original plaint was only an accidental slip; and no prejudice will be caused to the respondents if the amendment of the plaint is allowed by altering the boundaries.

10. Learned counsel for the respondents, on the other hand, contends that as the trial in the suit has already commenced, the application for amendment of plaint was barred under the provisions of Order VI Rule 17 CPC and when the petitioners have not mentioned any reason to satisfy the Court that in spite of due diligence, they could not have raised this plea before commencement of the trial, no indulgence can be shown to them.

11. Admittedly, the trial in the suit had commenced by the time the application for amendment of the plaint was

filed on 13.12.2012. There is no pleading in the affidavit filed in support of I.A.No.750 of 2012 by the petitioners that in spite of due diligence, they could not have raised this plea prior to commencement of the trial. No circumstances which prevented the petitioners from seeking amendment before commencement of trial are stated by petitioners.

12. The proviso to Order VI Rule 17 CPC does not permit an amendment to a pleading in the absence of material satisfying the Court that in spite of due diligence, a party could not have raised the matter before commencement of trial.

13. In **PATTAN BABU KHAN v. TUMMALA SESHIREDDY**^[1] relied upon by the learned counsel for the petitioners, no doubt this Court admitted amendment to the schedule in the plaint after commencement of trial, but on facts of that case, this Court had given a finding that the jurisdictional fact as envisaged in the proviso appended to Order VI Rule 17 of CPC exists and therefore, it is a fit case to exercise the jurisdiction to allow the amendment. Such satisfaction is absent in the present case. So the said judgment cannot be made applicable.

14. Therefore, I do not find any merit in the Civil Revision Petition and is, accordingly, dismissed. There

shall be no order as to costs. Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

M.S.RAMACHANDRA RAO, J

10th June, 2015

sj

[\[1\]](#) 2015(1) ALD 81