

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

CRP.NO.5004 of 2014

Between:

A.Srisailam

... Petitioner(s)

and

Smt Nirmala and four others.

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: ***10th August, 2015.***

SUBMITTED FOR APPROVAL:

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

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| 1 | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

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

CRP.No.5004 of 2014

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.03.09.2014 in I.A.No.496 of 2012 in OS.No.589 of 2009 of the XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad.

2. Petitioner herein is the plaintiff in the above suit. He filed the suit initially seeking declaration of title and perpetual injunction against the respondents/defendants alleging that they were attempting to interfere with his possession and enjoyment of the plaint schedule property.

3. He then filed I.A.No.496 of 2012 under Order VI Rule 17 CPC alleging that pending the suit, when the application I.A.No.3550 of 2009 filed by him for temporary injunction was dismissed, taking advantage of the same, respondents 2 to 5 with the help of police forcibly dispossessed him from the plaint schedule property and therefore, he may be permitted to amend the plaint seeking the relief of recovery of possession. He has also sought to make certain consequential amendments to the plaint by adding certain paragraphs in the body of the plaint.

4. Counter-affidavit was filed by the respondents 2 to 5 opposing this application for amendment and admitting that they are in possession of the plaint schedule

property. Some dispute with regard to payment of Court fee under the provisions of A.P. Court Fees and Suits Valuation Act, 1956 was also raised therein.

5. By order dt.03.09.2014, the Court below dismissed the said application. In a cryptic order the Court below justified the dismissal on ground that the entire record did not disclose any single paper filed for any transaction.

6. Challenging the same, this Revision is filed.

7. Counsel for the petitioner contended that the reasoning of the Court below is not only laconic but is perverse; that since the amendment sought by the petitioner does not in any way change the nature of the suit, the same ought not to have been dismissed by the Court below, since the dispossession alleged by the petitioner is subsequent to the filing of the suit.

8. Although counsel for the respondent sought to sustain the order passed by the Court below, I am of the opinion that the reason given by the Court below that perusal of the record did not disclose any single paper for any transaction, is a perverse reason, and that after the amendment is allowed only, material will be placed before the Court in support of the plea of dispossession raised in the amendment petition.

9. It is settled law that while deciding an application for

amendment of pleadings, the Court cannot go into the evidence in support of the said plea or the correctness of the plea raised therein. In **Adusumilli Venkateshwar Rao and another v. Chalasani Hymavathi**^[1] this Court held that a suit for perpetual injunction can be amended into a suit for possession and that there will be no change in the cause of action if such an amendment is permitted. Similar view has been expressed by the Hon'ble Supreme Court in **Sampath Kumar v. Ayyakannu**^[2]. In this view of the matter, the order passed by the Court below cannot be sustained.

10. Accordingly, the Civil Revision Petition is allowed. Order dt.03.09.2014 in I.A.No.496 of 2012 in OS.No.589 of 2009 of the XIII Additional Chief Judge (FTC), City Civil Court, Hyderabad, is set aside and the said I.A is allowed. There shall be no order as to costs.

11. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

10th August, 2015
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^[1] AIR 1990 AP 161

^[2] AIR 2002 SC 3369