

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

CIVIL REVISION PETITION No.5549 of 2010

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ORDER:

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This Civil Revision Petition is filed challenging the order

dt.10-11-2010 in I.A.No.1189 of 2010 in O.S.No.2702 of 2005 of the

I Additional Junior Civil Judge, Ranga Reddy District at L.B. Nagar.

2. The petitioner herein is plaintiff in the suit. He filed the suit against respondents for a perpetual injunction restraining them from interfering with his possession and enjoyment of the plaint schedule property.

3. Alleging that respondents, on 04-07-2010, had encroached into the plaint schedule property and built a part of compound wall preventing the petitioner from accessing his plot with the help of antisocial elements, the petitioner sought amendment of the plaint to incorporate this pleading and also to seek a relief of demolition of the compound wall illegally constructed on the North-East side admeasuring 15' x 27' in width in the suit schedule

property.

4. This application was opposed by respondents, who contended that since the trial has commenced, the application for amendment cannot be allowed and it would alter the nature of the suit. They also stated that it would cause prejudice to the defence of respondents.

5. By order dt.10-11-2010, the Court below dismissed the application for amendment relying upon the judgment in **Sunder Singh Vs. Des Raj**^[1]. It held that the application seeking amendment of prayer seeking mandatory injunction basing on events which have occurred during pendency of the suit, will change the nature of the suit and will cause prejudice to the other side, and therefore, application for amendment cannot be permitted.

6. Challenging the same, this Revision is filed.

7. The learned counsel for petitioner contends that the purpose of permitting amendments is to determine the real question in controversy between the parties and that in respect of amendment seeking to incorporate the events which have taken place after filing of the suit, the Court should allow such amendments to avoid multiplicity of

proceedings.

8. The learned counsel for respondents, on the other hand, supported the order passed by the Court below, and contended that permitting the amendment would result in altering the nature of the suit.

9. I have noted the submissions of both sides.

10. The Supreme Court of India considered the scope of Order VI Rule 17 CPC in **Rajesh Kumar Agarwal and others Vs. K.K. Modi and others**^[2]. The Supreme Court held :

“16. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

17. Order VI Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

18. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to

understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit."

11. In **Sanapala Ramanujulu @ Ramanuja Charyulu Vs. Sanapala Sridhrudu (died) and others**^[3] this Court had considered the question whether application seeking amendment of the plaint seeking mandatory injunction can be sought in a suit filed for perpetual injunction on the ground that after filing of the suit, certain constructions were made in the plaint schedule property forcibly. That application had been dismissed by the trial Court and the same was challenged in Revision in this Court. In the above case, this Court held that the constructions in question having been made during pendency of the suit, the trial Court ought to have allowed the application for amendment seeking mandatory injunction in addition to relief of prohibitory injunction. It also relied upon the judgment of the Madhya Pradesh High Court in **Rajaram Narayan Vs. Rajaram**^[4] and the judgment of the Punjab High Court in **K.L. Mangal Vs. Arun Mishra**^[5].

12. Therefore, I am of the opinion that the view taken by the Court below is unsustainable. Therefore, the impugned order is set aside. The Civil Revision Petition is

allowed and I.A.No.1189 of 2010 in O.S.No.2702 of 2005 of the I Additional Junior Civil Judge, Ranga Reddy District at L.B. Nagar is also allowed. No costs.

13. Since the suit is of the year 2005, the Court below shall endeavour to dispose of the suit as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

14. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 18-06-2015

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[\[1\]](#) 1998(5) ALT 114 (Digestive Notes)

[\[2\]](#) 2006(3) ALD 61 (SC) = AIR 2006 SC 1647

[\[3\]](#) 2014 (2) ALD 365

[\[4\]](#) AIR 1996 MP 12

[\[5\]](#) AIR 1958 Pun. 460