

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5965 of 2012

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.02.11.2012 in I.A.No.773 of 2012 in O.S.No.316 of 2009 on the file of Principal Junior Civil Judge, Tenali.

2. The Revision Petitioners herein are defendants in the above suit.
3. The respondents filed the above suit against petitioners seeking a perpetual injunction restraining petitioners from interfering with their alleged peaceful possession and enjoyment of the plaint schedule property.
4. After notices were received by petitioners they filed written statement opposing the suit claim.
5. Issues were framed. Trial commenced and PW.1 was examined on 24.01.1996 and Exs.A.1 to A.3 were marked.
6. At this juncture, the respondents/plaintiffs filed I.A.No.773 of 2012 under Order 6 Rule 17 CPC to amend the plaint raising certain new pleas and also seeking additional reliefs.
7. In the affidavit filed in support of this application it is only mentioned that on account of oversight these details were not mentioned in the plaint as originally filed; and that the respondents were advised by their Advocate to seek amendment of the plaint by incorporating the facts mentioned.
8. Counter-affidavit was filed by respondents opposing the

application for amendment, pointing out that this application has been moved after the trial has commenced and the case was coming up for cross-examination of PW.1. They further pointed out that as per proviso to Order 6 Rule 17 CPC, after the trial has commenced, application for amendment of plaint cannot be ordered, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of the trial; and that no proper explanation has been given on this point by respondents.

9. By order dt.02.11.2012, the Court below allowed I.A.No.773 of 2012. It noted Order 6 Rule 17 CPC including the proviso thereto but took the view that most of the facts now mentioned by respondents by way of amendment were already mentioned in the written statement and they would not cause any surprise to petitioners. It further held that since no substantial changes were introduced by parties in their pleadings, amendment of plaint ought to be allowed. It also observed that the amendment sought would not bring out any new cause of action or cause prejudice to petitioners, and there is also no inconsistency with the case originally pleaded in the plaint.
10. Questioning the same, this Revision is filed by petitioners.
11. The counsel for petitioners contended that the proviso to Order 6 Rule 17 CPC does not normally permit amendments to pleadings after the trial has commenced unless the court is satisfied that in spite of due diligence plaintiff could not have raised the matter before the commencement of trial; that in the affidavit filed in support of the application seeking amendment, there is no pleading on the part of respondents that in spite of

due diligence, they could not have raised these new facts before commencement of trial; and that the Court below has ignored this proviso to Order 6 Rule 17 CPC. He therefore, prayed that the impugned order requires to be set aside.

12. The counsel for respondents, on the other hand, supported the order passed by the Court below and contended that no prejudice is caused to petitioners by allowing the application seeking amendment and even if the amendment was sought after commencement of trial, it can still be allowed.

13. I have noted the submissions of both sides.

14. Admittedly, in the present case, the application I.A.No.773 of 2012 under Order 6 Rule 17 CPC seeking amendment of the plaint has been filed by respondents after the commencement of trial. There is no whisper in the affidavit filed in support of this application as to why these pleadings, introduced by way of amendment, could not be taken at the time when the plaint was originally filed.

15. Order 6 Rule 17 CPC states :

“17. Amendment of pleadings :

The Court may at any stage of the proceedings allow either party to alter or amend his pleading in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

16. In **Abdul Rehman and another v. Mohd. Ruldu and others**, the Supreme Court considered this provision and observed :

“10.It is clear that parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them. The courts have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such application is made after the commencement of the trial, in that event, the court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

11. The original provision was deleted by Amendment Act 46 of 1999, however, it has again been restored by Amendment Act 22 of 2002 but with an added proviso to prevent application for amendment being allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial. The above proviso, to some extent, curtails absolute discretion to allow amendment at any stage. At present, if application is filed after commencement of trial, it has to be shown that in spite of due diligence, it could not have been sought earlier. 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. This Court, in a series of decisions has held that the power to allow the amendment is wide and can be exercised at any stage of the proceeding in the interest of justice. The main purpose of allowing the amendment is to minimize the litigation and the plea that the relief sought by way of amendment was barred by time is to be considered in the light of the facts and circumstances of each case.”

17. It is thus clear that after the amendment to CPC by Amendment Act 22 of 2002 and introduction of the proviso to Order 6 Rule 17 CPC, the power to allow amendments to pleadings has been curtailed. Only if the application filed after commencement of trial for amendment of a pleading indicates that ‘in spite of due diligence the pleas raised therein could not have been sought earlier’, such application can be allowed, and not otherwise. It is unfortunate that the Court below, having adverted to the contents of Order 6 Rule 17 CPC, chose to ignore the proviso on the pretext that some of the pleadings now raised by the respondents/plaintiffs in the application for amendment were

also mentioned in the written statement filed by petitioners/defendants.

18. Therefore, the order of the Court below suffers from a serious error of jurisdiction and therefore cannot be sustained. It is accordingly set aside. The Civil Revision Petition is allowed. No order as to costs.

19. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-06-2015

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