

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

C.R.P.No.827 of 2015

ORDER:

Heard Sri N.Subba Rao, learned counsel for the petitioners and Sri N.Sri Ram Murthy, learned counsel for the respondents.

2. This Revision Petition is filed challenging the order dt.25-11-2014 in I.A.No.726 of 2009 in O.S.No.148 of 2006 of the Senior Civil Judge, Bapatla, Gunturu District.
3. Petitioners herein are plaintiffs in the suit. They filed the suit for declaration of title of 1st petitioner to the plaint schedule property and for a consequential perpetual injunction restraining the respondents from interfering with their alleged peaceful possession and enjoyment of the suit schedule property. They also filed I.A.No.732 of 2006 for temporary injunction against the respondents restraining the latter from interfering with their possession and enjoyment of the plaint schedule property including alienating the same pending suit. However, they did not press the said application and it was dismissed on 10-06-2009 as not-pressed.
4. According to the petitioners, within ten days of the dismissal of the said I.A., the respondents dispossessed them from the suit schedule property. Therefore, they sought to amend the plaint by seeking recovery of possession of the suit schedule property by way of amendment to the plaint by inserting paras 18 (a) and adding, at the end of paras-19 and 20, certain statements relating to this relief.
5. Counter affidavit was filed by the respondents opposing this

application and contending that it changes the nature of the suit.

6. By order dt.25-11-2014, the Court below dismissed the said application holding that allowing the petitioners to amend would create a new cause of action and that it changes the nature of the suit.
7. Challenging the same, this Civil Revision Petition is filed.
8. Learned counsel for the petitioners contended that the Court below erred in dismissing the application for amendment filed by the petitioners and that its conclusion that allowing the amendment would change the nature of the suit and also change the cause of action cannot be sustained.
9. Learned counsel for the respondents however refuted the above contentions and supported the order passed by the Court below. He also contended that the petitioners were never in possession of the suit schedule property and that the Court below was right in dismissing the application for amendment.
10. The Supreme Court in **Sampath Kumar Vs. Ayyakannu and another** and this Court in **Adusumillil Venkateswara Rao and another Vs. Chalasani Hymavathi** have held that in a suit for permanent injunction, the plaintiff is entitled to seek amendment by claiming relief of declaration of title and recovery of possession and such amendments do not alter the nature of the suit. Therefore, the view of the Court below that the nature of the suit or the nature of cause of action would be altered by allowing the amendment cannot be sustained.
11. As regards the contention of the respondents that the petitioners were never in possession of the suit schedule

property is concerned, that is a matter to be gone into during trial since it is settled law that a correctness of the case set up in the amendment cannot be gone into while deciding whether or not to allow the amendment.

12. Therefore, the impugned order is set aside. The Civil Revision Petition is allowed and I.A.No.726 of 2009 in O.S.No.148 of 2006 on the file of the Senior Civil Judge, Bapatla, Guntur District is allowed. Since the suit is of the year 2006, the Court below is directed to decide the suit as expeditiously as possible, preferably, within six months from the date of receipt of a copy of this order. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-10-2015

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