

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

CIVIL REVISION PETITION No.664 of 2014

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ORDER:

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This Civil Revision Petition is filed challenging the order

dt.16-12-2013 in I.A.No.250 of 2013 in O.S.No.447 of 2005 of the

II Additional Senior Civil Judge, Warangal.

2. The petitioner herein is plaintiff in the suit. He filed the suit for specific performance of an agreement of sale said to have been executed in his favour on 22-03-2003 by deceased 1st respondent.

3. Written statement was filed opposing the suit claim and contending that a sale deed was executed on 21-04-2005 in favour of 2nd respondent by 1st respondent.

4. Issues were framed on 19-01-2011 and although several opportunities were given to petitioner to lead evidence, he did not commence trial and so the Court below closed his evidence on 30-11-2011. Later the respondents led evidence and their evidence was also closed and the matter was posted for arguments on

14-12-2011.

5. Thereafter the petitioner sought five adjournments and then filed I.A.No.95 of 2012 to amend the plaint taking some other plea. It was allowed on 21-06-2012.

6. After dragging on the matter till 08-04-2013, the petitioner filed I.A.No.250 of 2013 again to amend the plaint to delete certain portions of the plaint and to substitute certain words therein.

7. In the affidavit filed in support of the said application, it was stated that the counsel for petitioner had not expressed the contention of petitioner in the manner in which the petitioner would have wanted to, that he had expressed it in a different manner and therefore it is necessary to amend the plaint.

8. Counter affidavit was filed by respondent opposing I.A.No.250 of 2013. He pointed out that once the trial has commenced, it is not permissible to seek amendment of plaint; that even the pleadings in the plaint originally indicate that petitioner had knowledge of the execution of sale deed by 1st respondent in favour of 2nd respondent; and his pleadings indicate that 1st respondent did so on her own free will and choice, but by way of amendment, he wants to withdraw the said admission by incorporating

a pleading that the sale deed was obtained by misrepresentation. It was contended that such withdrawal of admission by way of amendment cannot be permitted.

9. By order dt.16-12-2013, the Court below dismissed the said application. It observed that the suit had been filed in the year 2005, that written statements had also been filed and after the case was posted for arguments, this application had been filed without furnishing any reason why this plea could not have been raised before the commencement of trial. It held that since the petitioner had earlier filed I.A.No.95 of 2012 seeking amendment of the plaint, and so it is presumed that he had read the plaint and if he wishes, he could have asked for amendment of plaint including the present pleas in I.A.No.95 of 2012, but did not do so. It held that this shows that there is lack of diligence on the part of petitioner.

10. Challenging the same, this Revision is filed.

11. Heard Sri P.Krishna Reddy, learned counsel for petitioner and Sri V.Ravi Kiran Rao, learned counsel for 2nd respondent.

12. Although the learned counsel for petitioner contended that the amendment of plaint is necessitated on account of mistake committed by the counsel in not

correctly expressing the intention of petitioner at the time when the plaint was originally drafted and filed, I am unable to agree with the said submission. The suit had been filed in the year 2005 and the application for amendment of plaint I.A.No.250 of 2013 was filed on 08-04-2013, almost 8 years later. The petitioner had ample time to read the plaint and seek amendment thereof before the trial had commenced on 19-01-2011, but the petitioner failed to do so.

13. So, I am of the view that the Court below had rightly rejected I.A.No.250 of 2013 on the ground that due diligence had not been established by petitioner as required under proviso to Order VI Rule 17 C.P.C.

14. I do not therefore find any merit in the Revision and it is accordingly dismissed. No costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 03-09-2015

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