

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

CIVIL REVISION PETITION No.2866 of 2015

Between:

Chinna Ankagalla Subbamma and 3 others
... Petitioners

and

Durolla Nagesh
... Respondent

DATE OF JUDGEMENT PRONOUNCED: 23-07-2015

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
CIVIL REVISION PETITION No.2866 of 2015

ORDER :

This revision is filed by the petitioners, who are respondents/defendants aggrieved by the order dated 09.04.2015 in I.A. No.105 of 2015 in O.S. No.88 of 2013 on the file of Principal Junior Civil Judge, Proddatur which was filed by the petitioner/plaintiff under Order VI Rule 17 C.P.C seeking to permit them to amend the plaint.

2) Heard the learned counsel for the petitioners and the respondent before admission and before issuing notice to the respondent and perused the material on record.

3) The main suit is filed by the plaintiff for the relief of declaration of title and consequential possession. The plaintiff mentioned the plaint schedule within certain boundaries. After filing of written statement needless to say the I.A.No.345 of 2014 filed to amend the name of the 1st defendant mentioned as Obulamma to Subbamma that was allowed. The contest of the petitioners/defendants is that, in earlier petition for amendment, to incorporate the vacant site particulars also which is lying to the North of the verandah portion that was described in the plaint schedule with tin sheet, the

plaintiff ought to have sought the relief there itself and now cannot be permitted to bring a new cause of action or to include additional relief that was not there in the plaint. The trial Court, after hearing, by impugned order dated 09.04.2015 in I.A. No.105 of 2015 allowed the application with observation that the trial is undisputedly not commenced to invoke the requirement of due diligence as per the proviso to Order VI Rule 17 C.P.C and now only issues settled. The amendment is not changing any cause of action that is existing but for describing for a comprehensive consideration the particulars of the measurement of the site to the North, the tin sheet verandah. It is not even the case of the defendants that the plaintiffs are trying to change the boundaries by virtue of incorporation. The prayer is to incorporate the vacant site, specifically as to the North of the tin sheet verandah as to the existing boundaries.

4) Having regard to the above, what additional relief sought for is mandatory injunction to remove the tin sheet verandah/structures on the verandah with room and compound wall which are part and parcel of the plaint schedule. Thereby, there is no any inconsistent relief sought by the plaintiff muchless relief sought after commencement of trial to show any due diligence. The scope of revision under Article 227 of the Constitution of India as laid down by the Apex Court in ***Shalini Shyam***

Shetty V. Rajendra Shankar Patil^[1] is very limited. It must be shown not only irregularity or illegality in the impugned order of the lower Court but also there from resulted prejudice to the rights of the party or causes injustice. A perusal of the material including from the impugned order of the lower Court, more particularly from the settled proposition that amendments can be liberally be allowed but after commencement of trial the showing of due diligence as per the proviso to Order VI Rule 17 C.P.C, shows nothing to interfere with the order.

5) With the above observations, the revision is disposed of. The observations of this Court or the trial Court in permitting the amendment shall no way influence or prejudice any rights of the parties and contest of the defendants who got a right to file additional written statement including to show if the plaintiff has no title over the said vacant site abutting to the verandah to its North.

6) As a sequel, miscellaneous petitions pending, if any, in this petition shall stand closed. There shall be no order as to costs.

Dr. B. SIVA SANKARA RAO, J

23.07.2015
ksh

^[1] (2010)8 SCC 329