

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.875 of 2015

ORDER :

Heard Sri V. Subrahmanyam, counsel for petitioners; and Sri N. Krishna Rao, counsel for respondents.

2. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.18.11.2014 in I.A.No.366 of 2014 in O.S.No.529 of 2011 on the file of III Additional Senior Civil Judge, Vijayawada.

3. The petitioners herein are plaintiffs in the above suit.

4. They filed the suit against respondents for declaration of their title, and for a perpetual injunction restraining respondents from interfering with their possession and enjoyment of the plaint schedule property.

5. Written statement was filed by respondents contending that petitioners are not in possession of the plaint schedule property.

6. Issues were framed. Trial commenced. The evidence on plaintiffs' side was over and D1 and D2 were examined and the matter was coming up for evidence of D3.

7. In the evidence of PWs.1 and 2, it was elicited that petitioners were not in possession of the plaint schedule property and that the respondents had raised a construction over it. At that stage, I.A.No.366 of 2014 was filed by petitioners for amendment of the plaint, seeking relief of recovery of possession in place of perpetual injunction sought for by them.

8. In the affidavit filed in support of the said application, it is stated that in the evidence of respondents it is asserted that they are in possession of the plaint schedule property and therefore they were advised to file a petition seeking amendment of prayer in the plaint by seeking recovery of possession also.

9. By order dt.18.11.2014, the Court below dismissed the said petition. It held that application for amendment was not filed to bring out a fact which had happened subsequent to the filing of the suit, and since the application had been filed only basing on the evidence of defendant nos.1 and 2 and on their own evidence, there is lack of due diligence, and amendment cannot be permitted after commencement of the trial. It also stated that petitioners did not state anything with regard to losing of possession by them at any particular point of time, and limitation would be a factor in the matter.

10. Challenging the same, the present Revision is

filed.

11. The counsel for petitioners contended that amending a plaint by seeking relief of recovery of possession in place of relief of perpetual injunction would not alter the nature of suit; that the Court below ought not to have dismissed the application for amendment sought by them; that the purpose of permitting amendments of pleadings is to prevent multiplicity of proceedings, and if a suit for recovery of possession as on date is not barred, then the application for amendment also should be allowed since it does not change the nature of the suit; and that the bar under Order 6 Rule 17 would not be attracted to a situation like this since only amendment of relief in the plaint is being sought; and if the respondents contend that the relief of recovery of possession is barred by limitation, an issue can be framed in that regard and the court below can decide the same after evidence is adduced by both sides.

12. On the other hand, the counsel for respondents refuted the said contentions and stated that the amendment sought by petitioners would alter the nature of suit and since it is sought after the commencement of trial, it ought not to be permitted.

13. In **Adusumilli Venkateswar Rao and another v. Chalasani Hymavathi^[1] and Sampath Kumar v.**

Ayyakannu and another^[2], this Court and Supreme Court have held that a plaintiff in a suit for permanent injunction is entitled to seek amendment by claiming relief of recovery of possession and such amendment would not alter the nature of the suit. Therefore, the contention of respondents that allowing the amendment would alter the nature of the suit, is not tenable.

14. Coming to the objection regarding proviso to Order 6 Rule 17 C.P.C., in my considered opinion, since the amendment being sought is only to the prayer in the plaint, the bar created by Order 6 Rule 17 would not be attracted, and in case the respondents raise a plea that the relief of recovery of possession is barred by limitation, the Court below can certainly frame an issue on the said point after allowing the amendment and decide the said issue in accordance with law, after giving opportunity to both sides to lead evidence. This is because if a fresh suit for recovery of possession is not barred as on date, the application for amendment can be ordered since the very purpose of permitting amendments is to prevent multiplicity of proceedings.

15. Therefore, the Civil Revision Petition is allowed and the impugned order dt.18.11.2014 in I.A.No.366 of 2014 in O.S.No.529 of 2011 on the file of III Additional Senior Civil Judge, Vijayawada is set aside, and the said I.A. is allowed. No order as to costs.

16. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 06.08.2015

Ndr/*

[\[1\]](#) AIR 1990 AP 161

[\[2\]](#) AIR 2002 SC 3369