

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.3406 OF 2015

DATED:28-8-2015

Between:

Rajavolu Krishna Murthy ... Petitioner

And

Rajavolu Rajasekhar
and another ... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mr. V.S.R.M.V. Prasad Sanaka

COUNSEL FOR THE RESPONDENTS: -

THE COURT MADE THE FOLLOWING:

ORDER:

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This civil revision petition is filed against order dt.20.7.2015 in I.A. No.561 of 2014 in A.S. No.1 of 2012, on the file of the Senior Civil Judge, Repalle.

The respondents filed O.S. No.303 of 2007 originally for permanent injunction restraining the petitioner from interfering with peaceful possession and enjoyment of 'ABCD' *pantabode* for watering the plaint schedule land by the plaintiffs and for costs. Later, the respondents have got the plaint amended by seeking mandatory injunction for rebuilding the ABCD *pantabode*. After trial, the trial Court has dismissed the suit. One of the grounds for dismissal of the suit was that the respondents have not claimed relief of declaration of easementary right over the said *pantabode*.

Feeling aggrieved by the judgment of the trial Court, the respondents have filed an appeal, A.S. No.1 of 2012, before the Senior Civil Judge, Repalle. They have filed I.A. No.1 of 2012 in the said appeal, under Order 6 Rule 17 of the Code of Civil Procedure, seeking amendment of plaint for inclusion of the relief of declaration of easementary right. The petitioner has resisted the said application. However, by order under revision, the lower appellate Court has allowed the said application.

Learned counsel for the petitioner, Mr. V.S.R.M.V. Prasad Sanaka, representing the petitioner, has argued with conviction that the lower appellate Court ought not to have allowed the application filed by the respondents as it causes serious prejudice to his client.

I have carefully considered this submission of the learned counsel for the petitioner. As rightly observed by the lower Court, amendment of plaint was sought by the respondents, after filing of the

Advocate Commissioner's report, seeking relief of mandatory injunction for rebuilding ABCD *pantabode* and the same was allowed. Without seeking declaration of right over ABCD *pantabode*, the respondents cannot seek mandatory injunction. If the amendment sought is not allowed, that would eventually drive the respondents to file a fresh suit. One of the objects of amendment of pleadings and the reliefs is to avoid multiplicity of proceedings. Unless the proposed amendment causes serious prejudice to the interests of the opposite party, the Courts are liberal in allowing amendment.

This Court in *G.S. Prakash v. Polasa Hanumanlu*^[1], has enumerated the instances where amendments can be allowed and when the same shall be rejected. It is profitable to reproduce the same herein below.

"Instances where amendments have to be allowed :

(a) All pre-trial stage (prior to examination of witnesses) amendments which do not alter the nature and character of the suit and substitute or introduce new cause of action;

(b) In cases of pending or post-trial amendments, the Court must allow the same subject to the applicant, in addition to satisfying the condition (a) supra, satisfying two other conditions, viz., (i) that the amendment is necessary for determining the real questions in controversy and (ii) that despite due diligence, the applicant could not move the application at an earlier stage;

(c) Where, the proposed amendment will not work injustice or cause prejudice to the other side;

(d) Where, by the proposed amendment the position of the other party will be altered, but the same can be compensated by costs;

(e) Even where the proposed amendment introduces inconsistency in pleadings, if by the proposed amendment, the party does not seek to resile from the admissions if any made in the original pleadings;

(f) Where the proposed amendment relates to a time barred claim and the Court is satisfied that allowing such amendment really subserves the cause of justice and avoids further litigation.

Instances where amendments have to be refused:

(i) Where by the proposed amendment the party seeks to alter the nature, character and constitution of the suit (mere inconsistent pleadings may not, in all cases, change the nature and character of the suit) or substitute cause

of action or introduce a distinct cause of action;

(ii) where the valuable defence by way of admissions by a party has accrued to the opposite party and by the proposed amendment the party intends to resile from such admissions;

(iii) where the position of the other party will be altered by the proposed amendment and the injury caused to him by such alteration could not be compensated in costs.

(iv) Where the proposed amendment lacks bonafides and is far too belated and the party seeking the amendment was not diligent in approaching the court;

(v) Where a fresh suit, if instituted on the proposed amendments, will be barred by law;"

In the instant case, the proposed amendment will not alter the nature or character of the suit. None of the instances enumerated in the judgment in *G.S. Prakash* (supra) for rejection of application for amendment exists in this case. Furthermore, as the appeal will be decided based only on the evidence available on record, no prejudice will be caused to the petitioner. In the light of these facts and the legal position referred to above, the order of the lower appellate Court does not suffer from any illegality or jurisdictional error warranting interference of this Court in exercise of jurisdiction under Article 227 of the Constitution of India.

The civil revision petition is accordingly dismissed.

As a sequel to dismissal of the civil revision petition, C.R.P.M.P. No.4559 of 2015 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

28-8-2015

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[\[1\]](#) 2015 (2) ALT 594