

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

**C.R.P.No.5883 of 2011**

**ORDER:**

Heard Sri A.Sudhakara Rao, learned counsel for the petitioners and Sri K.Nandaiah, learned counsel for the respondent Nos.1 and 2.

2. This Revision Petition is filed challenging the Order dt.24-09-2011 in I.A.No.2084 of 2009 in O.S.No.213 of 2009 of the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, dismissing the application seeking amendment of the plaint.

3. Petitioners herein are plaintiffs in the suit. They filed the above suit seeking relief of perpetual injunction against the respondents restraining respondents from interfering with their alleged peaceful possession and enjoyment of the plaint schedule property.

4. Written Statement was filed by the respondents disputing suit claim and questioning the claim of the petitioners that they are the absolute owners of the plaint schedule property. Written Statement was filed in June 2009 immediately.

5. Thereafter, in August 2009, petitioner filed I.A.No.2084 of 2009 seeking amendment of the plaint,

seeking cancellation of certain documents referred to in the Written Statements and also seeking relief of declaration of their title to the plaint schedule property.

6. In the affidavit filed in respect of this application, it has been contended by the petitioners that they came to know about these documents only after perusing the Written Statement and since the cloud over the title of the petitioners has been now raised in the pleadings in the written statement, relief of declaration of title has also been sought apart from incorporating paras 10 (a) and 10 (b) and VII (a) in the Written Statement.

7. Counter affidavit was filed by respondent Nos.1 and 2 opposing the amendment of the plaint. They contend that the petitioners are neither owners or possessors of the plaint schedule property and that the amendment sought cannot be allowed.

8. By order dt.24-09-2011, the Court below dismissed the said application. It held that since the amendment sought would change the nature of the suit, cause of action and affect limitation, it cannot be permitted.

9. Challenging the same, this Revision Petition is filed.

10. In **Sampath Kumar Vs. Ayyakannu and another**<sup>[1]</sup>, suit was filed for perpetual injunction alleging

that the appellant therein was having possession of the plaint schedule property. In the written Statement, this was denied. Subsequently application under Order VI Rule 17 CPC was filed seeking amendment of the plaint alleging that pending suit, the defendant had forcibly dispossessed the plaintiff and relief of declaration of title to the plaint schedule property as well as consequential relief of delivery of possession was sought by amending the plaint. This application was opposed by the respondent contending that this would change the cause of action. It was also contended that the defendant had perfected his title by adverse possession of the plaint schedule property rendering the suit for recovery of possession barred by time. The trial Court rejected the application for amendment. This was confirmed by the High Court. The Supreme Court reversed the order of the High Court and that of the trial Court and held that the basic structure of the suit is not altered by the proposed amendment and what is sought to be changed is the nature of relief sought for by the plaintiff. It held that Order 6 Rule 17 CPC confers jurisdiction on the Court to allow either party to alter or amend his pleadings at any stage of the proceedings and on such terms as may be just. Such amendments as are directed towards putting-forth and seeking determination of the real questions in controversy between the parties shall be permitted to be made.

11. In **Pankaja and another Vs. Yellappa (D) by L.Rs. and others**<sup>[2]</sup> also, suit was filed for permanent injunction restraining interference with the possession of the plaintiff and subsequently an amendment of the plaint was sought seeking relief of declaration of title. The trial Court rejected the application of amendment and the High Court confirmed it. The Supreme Court reversed the said judgment. The Supreme Court held that the power of the Court to allow amendment of pleadings is wide enough to permit amendments even in cases where there has been substantial delay in filing such amendment applications and that the dominant purpose of allowing the amendment is to minimize the litigation.

12. Having regard to the above two decisions, I am of the opinion that the Court below erred in holding that the proposed amendment would change the nature of the suit, cause of action and affect the limitation and others cannot be permitted.

13. On the issue of limitation, the Supreme Court has observed in the above case that an application for amendment of pleading should not be disallowed merely because it is opposed on the ground that the same is barred by limitation. On the contrary, it held that the said application will have to be considered bearing in mind the discretion that is vested with the Court in allowing or disallowing such amendment in the interest of justice. It

observed that the plea of limitation being disputed could be made subject matter of issue in the suit after allowing the amendment prayed for.

14. In this view of the matter, the impugned order dt.24-09-2011 in I.A.No.2084 of 2009 in O.S.No.213 of 2009 of the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, cannot be sustained and it is accordingly set aside.

15. The Civil Revision Petition is allowed and I.A.No.2084 of 2009 in O.S.No.213 of 2009 is also allowed and Court below is directed to frame an issue as to whether relief sought by plaintiff is bared by limitation or not. No costs.

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

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 01-07-2015

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[\[1\]](#) AIR 2002 S.C. 3369

[\[2\]](#) AIR 2004 S.C. 4102