

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

CIVIL REVISION PETITION No.2517 of 2012

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ORDER:

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This Civil Revision Petition is filed challenging the order
dt.21-03-2012 in I.A.No.270 of 2011 in O.S.No.5 of 2008
of the Junior Civil Judge at Chevella, Ranga Reddy
District

2. The petitioner herein is plaintiff in the above suit.
3. He filed the suit for a perpetual injunction restraining the respondent from interfering with his possession and enjoyment of the plaint schedule property. He alleged that he is in possession of the said property and had purchased the same under a registered sale deed dt.24-10-2000 and the respondent, who is having land on the Southern side, is attempting to construct a compound wall by encroaching into his land.
4. Written statement was filed by respondent denying the said allegation and disputing the title of petitioner and possession of the petitioner in respect of the suit land and insisting that he is in possession thereof.

5. I.A.No.270 of 2011 was filed by petitioner alleging that on 25-06-2011, after the suit was filed, the respondent encroached into the property and is continuing in illegal possession thereof. It is further contended that after taking forcible possession of property, the respondent dug a pit therein for the purpose of making permanent structures and therefore he should be allowed to amend the plaint by seeking the relief of recovery of possession as well as mandatory injunction by inserting certain paragraphs in the body of the plaint in support of the said pleadings. It is also contended that these amendments are required for the purpose of further proceedings in the suit in view of the changed circumstances and to avoid multiplicity of proceedings.

6. This application was opposed by respondent, who contended that the date mentioned in the affidavit filed by petitioner in support of the application for amendment is not correct and that he was never in physical possession of the property and there was no encroachment made by him on 25-06-2011, as alleged. It is also alleged that after obtaining *ad interim* injunction from the trial Court, it was the petitioner, with the help of antisocial elements, who tried to occupy the land of respondent. He alleged that the

amendment is not required at this stage and the application is filed with an ulterior motive to get sympathy from the Court by suppressing the material facts.

7. By order dt.21-03-2012, the Court below dismissed the said application stating that no documentary evidence is adduced, that the suit is coming up for trial and application for temporary injunction I.A.No.22 of 2008 was disposed on 04-08-2010 directing both parties to maintain *status quo*. It went into the correctness of the case pleaded in the amendment application and gave a finding that the question of encroachment by respondent does not arise. It also observed that the petitioner did not mention to what extent the land has been encroached by respondent and compound constructed. It observed that when in the plaint, the petitioner had alleged that there is a threat of encroachment on the southern side, the allegation in the amendment application that there is encroachment on the western side by constructing compound wall, cannot be accepted.

8. Challenging the same, this Revision is filed.

9. The learned counsel for petitioner contended that in view of subsequent events, the petitioner is entitled to amend the plaint by seeking the relief of recovery of

possession and while deciding the application for amendment, the Court below is not supposed to go into the correctness of the case set up in the amendment application. She therefore contended that the basic structure of the suit will not be changed, that there was merely change in the relief and since the petitioner is entitled to file an independent suit, there is no reason why the same relief could not be prayed for in the pending suit.

10. The learned counsel for respondent, on the other hand, contended that if a fresh cause of action arose pending suit, application for amendment cannot be filed and the party should be compelled to only file a separate suit.

11. I have noted the submissions of both sides.

12. In **Rajesh Kumar Agarwal and others Vs. K.K.Modi and others**^[1], the Supreme Court dealt with the scope of Order VI Rule 17 CPC and observed :

“16. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

17. Order VI Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is

imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

18. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.

13. In **Adusumilli Venkateswar Rao and another Vs.**

Chalasani Hymavathi^[2], this Court had held that in a suit for perpetual injunction it is permissible to permit amendment of relief and seeking relief of possession and this would not change the cause of action.

14. In **Sanapala Ramanujulu @ Ramanuja Charyulu**

Vs. Sanapala Sridhrudu (died) and others^[3], this Court relied upon both these decisions and held that the purpose of permitting amendment of pleadings is to avoid multiplicity of proceedings and if it is alleged that certain events have happened during pendency of the suit, the parties are entitled to file applications for amendment, if necessary, by changing the nature of relief claimed. In that case also, pending a suit for injunction, it was alleged that plaintiff was dispossessed and application for

amendment of plaint by seeking relief of mandatory injunction was sought. The trial Court rejected the said application. This Court set aside the said order and held that the trial Court ought to have allowed the application for amendment. This Court also held that while considering whether an application for amendment should or should not be allowed, the Court should not go into the correctness or falsity of the case pleaded in the amendment, that it should not record a finding on the merits of the amendments, and the merits of the case sought to be incorporated by way of amendment are not to be adjudged at the stage of allowing the prayer for amendment. It followed the judgment in **Rajesh Kumar Agarwal** (1 supra), which had taken the said view.

15. A reading of the impugned order passed by the Junior Civil Judge, Chevella, Ranga Reddy District clearly shows that he had violated not only the principle that subsequent events can be brought on record by way of amendment but has also gone into the merits of the case set up in the amendment, which he ought not to have done. In this view of the matter, the impugned order cannot be sustained.

16. The Civil Revision Petition is allowed and the order dt.21-03-2012 in O.S.No.5 of 2008 of the Junior Civil

Judge, Chevella, Ranga Reddy District is set aside and the said I.A. is allowed. No costs.

17. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 14-08-2015

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[\[1\]](#) AIR 2006 SC 1647

[\[2\]](#) AIR 1990 AP 161

[\[3\]](#) 2014(2) ALD 365