

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

Civil Revision Petition No.3314 of 2014

Between:

D.Vidyanand Babu

... Petitioner(s)

and

D.Prithvi Raj Chackravathy and another

... Respondent(s)

DATE OF JUDGMENT PRONOUNCED: ***31st July, 2015.***

SUBMITTED FOR APPROVAL:

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

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

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**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

Civil Revision Petition No.3314 of 2014

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.28.07.2014 in I.A.No.218 of 2014 in O.S.No.2307 of 2013 of the IX Junior Civil Judge, City Civil Court, Hyderabad.

2. The petitioner herein is the plaintiff in the above suit which was filed against the respondents for a perpetual injunction restraining the respondents from interfering with plaintiff's peaceful possession and enjoyment of the plaint schedule properties. The said suit was filed on 13.11.2013.

In the plaint, he described the 2nd defendant as the daughter of late Rama Rao instead of Mr.Dhaduwai Krishna Murthy.

3. The 1st defendant filed written statement on 02.01.2014 pointing out that the 2nd defendant is not the daughter of Late Rama Rao and that she is the daughter of Dhaduwai Krishna Murthy. The 2nd defendant also filed a written statement on 07.02.2014 to the same effect.

4. In view of these, the petitioner filed I.A.No.218 of 2014 on 24.06.2014 seeking amendment of the plaint by substituting the words "Dhaduwai Krishna Murthy" in the place of the words "late Rama Rao" in paras 1 and 2 of the plaint.

5. The said application was admittedly filed before the trial commenced.

6. Counter-affidavit was filed to the said application by the 1st respondent/1st defendant contending that the petitioner cannot be allowed to change the allegations in the plaint as per his choice and even to change the name of owner of the plaint schedule property without filing any material in support of his plea. Certain contentions on the merits of the claim of

the petitioner were also raised therein. It was also contended that the petitioner is misusing the legal procedure and wasting the time of the Courts and defendants by filing such applications.

7. By order dt.28.07.2014, the Court below dismissed the said application. It held that the application for amendment, having been filed seven months after filing the suit, it is belated and the petitioner cannot be allowed to fill up the lacunas in the case by filing application for amendment. It was also observed that it would cause prejudice to the 1st respondent if the amendment petition is allowed.

8. Challenging the same, this Revision is filed.

9. Counsel for the petitioner contended that since the trial has not yet commenced, no prejudice would be caused to the respondents as they would get an opportunity of filing an amended written statement or additional written statement meeting the case of petitioner. He further contended that the reasoning given by the Court below is perverse since every application for amendment would be to fill up some lacuna only and when the law permits the same, it should be allowed.

10. Counsel for the 1st respondent however contended that the order passed by the Court below is correct; that no material was filed along with the plaint except some third party affidavit by the petitioner; there is no merit in the suit claim at

all and the suit itself has been filed only to harass the respondents.

11. I have noted the submissions of both sides.

12. As stated above, the suit was filed on 13.11.2013 mentioning in the paras 1 and 2 thereof the name of the father of the 2nd defendant as late Rama Rao. Written statement was filed by both respondents by February, 2015 pointing out that the name of the father of the 2nd respondent is not late Rama Rao, but Dhaduwai Krishna Murthy. In June, 2014, petitioner had filed I.A.No.218 of 2014 seeking amendment of the plaint to substitute the name of Sri Dhaduwai Krishna Murthy in the place of late Rama Rao in paras 1 and 2 of the plaint. It cannot be said that there is any undue delay on the part of the petitioner in filing the application for amendment of the plaint by incorporating the name of 'Sri Dhaduwai Krishna Murthy' in the place of 'late Rama Rao' in paras 1 and 2 of the plaint. Therefore, the observation of the Court below that the application filed by the petitioner is belated, cannot be accepted, particularly when it has been filed before the trial has commenced.

13. In ***Abdul Rehman and another v. Mohd. Ruldu and***

others^[1] the Supreme Court held:

"parties to the suit are permitted to bring forward amendment of their pleadings at any stage of the proceeding for the purpose of determining the real question in controversy between them and the Courts

have to be liberal in accepting the same, if the same is made prior to the commencement of the trial. If such a application is made after commencement of the trial, in that event, the Court has to arrive at a conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.”

The principle laid down in the said judgment clearly applies to the present case.

14. I am also of the opinion that the Court below erred in stating that allowing the amendment of the plaint would enable the petitioner to fill up the lacuna in the case, that the said reasoning is perverse, since sometimes amendment of pleadings are carried out only to add or substitute the details which are already mentioned therein and the law permits such an amendment by making a provision under Order VI Rule 17 CPC. There is no question of any prejudice to the respondents, since they would get an opportunity to file an amended written statement or an additional written statement once the plaint is amended. Therefore, the order passed by the Court below cannot be sustained.

15. Accordingly, the Civil Revision Petition is allowed and order dt.28.07.2014 in I.A.No.218 of 2014 in O.S.No.2307 of 2013 of the IX Junior Civil Judge, City Civil Court at Hyderabad is set aside and the said I.A. is allowed. There shall be no order as to costs.

16. Consequently, Miscellaneous Petitions pending if any,

shall stand closed.

M.S. RAMACHANDRA RAO, J

31st July, 2015.
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[\[1\]](#) 2012(11) Supreme Court Cases 341