

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

C.R.P. No.4695 of 2010

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.12.08.2010 in I.A.No.554 of 2010 in O.S.No.676 of 2009 of the II Additional Junior Civil Judge, Guntur.

2. The petitioner herein is the plaintiff in the above suit. She filed the said suit seeking a perpetual injunction against the respondent to restrain him from in any way encroaching into the plaint schedule property by making construction and thereby depriving her of the right to light and air and for costs.

3. She also filed I.A.No.602 of 2009 seeking an interim injunction of the same nature pending disposal of the suit.

4. The said application was allowed.

5. However, according to the petitioner, the said interim injunction granted by the Court below was violated by the respondent who proceeded to encroach the petitioner's property and make construction therein.

6. Therefore, she filed I.A.No.554 of 2010 to amend the plaint by adding some paragraphs therein about these subsequent developments and also seeking the relief of

mandatory injunction directing the respondent to remove the constructions made in the encroached portion of the property in violation of the interim order passed in I.A.No.602 of 2009 and also in violation of the approved plan issued by the Guntur Municipal Corporation.

7. This application was opposed by the respondent and the allegations made therein were denied. He contended that the constructions made by him were in his own property and that the petitioner's right to light and air has not been affected in any way by the construction made by him.

8. By order dt.12.08.2010, the Court below dismissed the said application. It held that the trial in the suit had commenced on 02.03.2010; petitioner had completed her evidence by 23.03.2010; that the respondent's evidence was also closed on 28.04.2010 and the suit was coming up for hearing of arguments. It therefore held that the proviso to order VI Rule 17 CPC bars the Court from permitting the petitioner to amend the plaint, since the petitioner failed to show that in spite of due diligence she could not have raised the matter before commencement of trial.

9. Challenging the same, this Revision is filed.

10. Counsel for petitioner contended that respondent

had violated the temporary injunction order granted by the trial Court and made constructions in violation of the said order and this being an event which occurred during the pendency of the suit, the Court below was not correct in rejecting the application for amendment. She also contended that since the construction made by the respondent, subsequent to the suit, is interfering with her right to light and air, the Court below ought not to have dismissed the application for amendment.

11. Counsel for the respondent on the other hand supported the order passed by the Court below and contended that since the application for amendment was filed after commencement of trial, the proviso to order VI Rule 17 CPC bars the same.

12. I have noted the contentions of both sides.

13. There is no dispute that the application for amendment of plaint was filed by the petitioner after conclusion of evidence of both sides. But according to the petitioner, in violation of the temporary injunction order granted in the suit, the respondent had made constructions interfering with her right to light and air in the plaint schedule property and also contrary to the approved plan sanctioned by the Guntur Municipal Corporation.

14. These being events which have allegedly occurred pending suit, merely on the ground that there is some delay in moving the application for amendment, the Court below is not correct in dismissing it. I therefore held that the impugned order is not sustainable.

15. So, this Civil Revision Petition is allowed. The order dt.12.08.2010 in I.A.No.554 of 2010 in O.S.No.676 of 2009 of the II Additional Junior Civil Judge, Guntur 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 dismissed.

M.S.RAMACHANDRA RAO, J

29th October, 2015

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