

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH

C.R.P.No.2295 of 2014

Between:

T.Munilakshmi and another

.....Petitioner

and

A.Rajendra Reddy

.....Respondent

Date of Judgment pronounced : 06-08-2015

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked :
Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

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

C.R.P.No.2295 of 2014

ORDER:

Heard Sri T.C.Krishnan, learned counsel for the

petitioners and Sri J.Ugra Narasimha, learned counsel for respondent.

2. This Revision Petition is filed challenging the Order dt.01-05-2014 in I.A.No.897 of 2011 in O.S.No.1143 of 2009 of the Principal Junior Civil Judge, Tirupati.

3. The petitioners are defendants in the above suit. The said suit was filed by the respondent against the petitioners for declaration of title, recovery of possession and for mandatory injunction in respect of plaint B schedule property of the suit.

4. It is the case of the respondent/plaintiff that the petitioners have encroached the said B schedule property in the second and third floors by extending the slab of the super structure erected by them.

5. The petitioners filed Written Statement denying the suit allegations and denying the allegation that they have encroached any property of the respondents.

6. Issues were framed. P.W.1 filed his affidavit in lieu of chief examination and documents on his behalf were marked and the matter was posted for cross examination of P.W.1.

7. At this stage, the petitioner filed I.A.No.897

of 2011 under Order 6 Rule 17 CPC raising certain pleas particularly with regard to the measurements of the properties claimed by them. He also raised the contention that the vendors of the testator of the respondent had no right to sell the property on the east of the respondent's side under a sale deed dt.30-05-1996 because on that date, the said vendor had no possession and enjoyment of it. It was further contended by the petitioners that they have not raised the pleadings in the Written Statement by over sight and therefore they were advised to file this petition seeking its amendment.

8. Counter affidavit was filed by the respondent stating that the trial had already commenced and no amendment can be permitted in view of the proviso to Order 6 Rule 17 CPC. It was contended that the proposed amendment causes grave prejudice to the respondent and the nature of the case is also altered. It was also pointed out that after marking of the documents, advocate was changed by the petitioners who took time and on the next adjournment, filed an application for amendment of the Written Statement.

9. By order dt.01-05-2014, the Court below dismissed the said application. It held that the trial has commenced and the application for amendment cannot be maintained after the trial has commenced. It further held that merely because certain facts are omitted by over

sight, the party cannot be permitted to amend his pleadings after commencement of trial and that since the proposed amendment runs into more than three pages, and the facts stated therein indicate that the petitioner had knowledge of the same even prior to the filing of the suit, they should have stated these things in the Written Statement initially filed.

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

11. Learned counsel for the petitioner contended that since only affidavit in lieu of chief examination of P.W.1 is filed and cross examination of P.W.1 has not yet commenced, trial cannot be said to have commenced and in any event, the respondent would be entitled to file rejoinder to the amended Written Statement and then contest the suit and no prejudice would be caused. He further contended that the view of the Court below that omissions in pleadings cannot be accorded by way of amendment is perverse, since that is the one of purposes of Order 6 Rule 17 CPC.

12. Learned counsel for the respondent on the other hand refuted the above contentions and supported the order passed by the Court below.

13. In **Baldev Singh and others Vs. Manohar Singh and another**^[1], the Supreme Court held that

proviso to Order 6 Rule 17 CPC provides that amendment of pleadings shall not be allowed when the trial of the suit has already commenced. It held that the record in the said case reveals that the parties are yet to file documents in the suit; the record also does not indicate that the suit was on the verge of conclusion and that “commencement of trial” as used in proviso to Order 6 Rule 17 CPC must be understood in the limited sense as meaning the final hearing of the suit, examination of the witnesses, filing of documents and addressing of arguments.

14. I am of the considered opinion since only affidavit by way of evidence has been filed on behalf of P.W.1, and cross examination of P.W.1 has not yet commenced, it cannot be said that trial has commenced in the suit. All procedural provisions are hand waid and not mistress in the administration of justice as held in **Mr. Shaikh Salim Haji Abdul Khayumsab Vs. Mr. Kumar and Others.**^[2].

15. In this view of the matter, I am of the opinion that the Court below erred in holding that the petitioners are not entitled to seek amendment of the Written Statement. Merely because the proposed amendments run into three pages and the facts stated therein are alleged to be probably within the knowledge of the petitioners at the time when they filed the Written Statement earlier, the application of the petitioners to

amend the Written Statement cannot be rejected.

16. Therefore, the Civil Revision Petition is allowed and the order dt.01-05-2014 in I.A.No.897 of 2011 in O.S.No.1143 of 2009 of the Principal Junior Civil Judge, Tirupati is set aside and the said I.A. is allowed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 06-08-2015

kvr

[\[1\]](#) (2006) 6 S.C.C. 498

[\[2\]](#) AIR 2006 S.C. 396