

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2727 OF 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is filed to review the order passed in I.A. No.155 of 2013 in O.S. No.21 of 2008, on the file of Junior Civil Judge, Tekkali, filed under Rule 17 of Order VI of the Code of Civil Procedure, 1908 (for short, 'CPC') on the ground that during trial it came to the notice of the petitioner that the respondent encroached 27 feet of pathway from East to West, which connects to RCC road and the Advocate-Commissioner also noted the same in his Report. Thus the occupation of 2.2 feet into 27 feet is illegal, and, therefore the petitioner seeks permission to amend the plaint schedule.

02. Before the trial court, the first respondent filed counter denying the allegations, contending that there was no encroachment, besides raising several other contentions.

03. The trial court, after hearing argument of both the counsel, dismissed the interlocutory application filed under Rule 17 of Order VI of CPC without assigning any reasons.

04. The order challenged in the revision raising several contentions, while contending that the order under challenge is not accordance with law and prayed to set aside the same.

05. During course of hearing, at the stage of admission, Sri A. Ravi Shankar, learned counsel for the petitioner, while reiterated the contentions urged before the trial court, contended that the plaint can be amended at any stage, subject to limitations under Rule 17 of Order VI of CPC, since relief claimed by the petitioner would not change the nature of suit. Therefore, such relief can be granted. The trial court dismissed the petition on the ground that the petitioner filed the petition at belated stage that is after commencement of trial, in view of proviso to Rule 17 of Order VI of CPC.

06. Learned counsel for the petitioner fairly conceded that the petition was filed only after commencement of trial and after appointment of Advocate-Commissioner to note physical features.

07. The Apex Court in **REVAJEETU BUILDERS AND DEVELOPERS v. NARAYANASWAMY AND SONS AND OTHERS**^[1] and **RAMESHKUMAR AGARWAL v. RAJMALA EXPORTS PRIVATE LIMITED AND OTHERS**^[2] laid down certain guidelines for granting relief in petition under Rule 17 of Order VI of CPC.

08. In view of the principles laid down in the above judgments, the Courts have to allow amendments if petitions under Rule 17 of Order VI of CPC are filed before commencement of trial, the petitioner has to establish that despite exercise due diligence the petitioner could not take steps to amend the plaint under Rule 17 of Order VI of CPC, but here no explanation was offered and the facts on the record clearly establish that the petitioner did not exercise due diligence in such circumstances the petition under Rule 17 of Order VI of CPC cannot be allowed as held by the Apex Court. Keeping in view of principles laid down by the Apex Court in **RAMESHKUMAR AGARWAL** (supra), I find no ground to interfere with the order passed in I.A. No.155 of 2013 in O.S. No.21 of 2008.

09. The jurisdiction of this Court under Article 227 of the Constitution is limited in view of the Judgment of the Apex Court reported in **HARI VISHNU KAMATH VS. SYED AHMAD ISHAQUE AND OTHERS**^[3]. Hence, I find no illegality or illegal exercise of discretion by the trial court in passing the impugned order, consequently the revision is liable to be dismissed.

10. Accordingly, the revision is dismissed. No costs.

11. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 24.06.2016

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[\[1\]](#) 2009(8) SCJ401
[\[2\]](#) 2012(4) SCJ 724
[\[3\]](#) 1955 1 SCR 1104