

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

-

CIVIL REVISION PETITION NO.2408 OF 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the I Senior Civil Judge, Hyderabad in I.A. No.968 of 2015 in O.S. No.526 of 2013 dated 08.02.2016. The said I.A. was filed by the petitioner herein, under Order VI Rule 17 CPC, requesting the Court below to permit amendment of the written statement and the additional written statement by substituting the date of his dispossession, from the schedule property by the respondent-plaintiff, from 02.05.2013 to 05.04.2013.

In the order under revision, the Court below observed that the amendment was sought on the ground that the documents filed by the petitioner showed that he was threatened and dispossessed from the schedule property on 05.04.2013 itself, on which date he had complained to the Chaderghat Police Station; the respondent-plaintiff had contended that the petition was filed only to overcome the admission made by the petitioner in the Criminal Case wherein he had admitted that he had mentioned the date as 02.05.2015, but his documents showed 05.04.2013; the Suit was at the stage of defendant's evidence, and the affidavit of D.W-1 had already been filed; the petitioner had cross-examined the respondent-plaintiff-P.W-1 and her witnesses; it was suggested to P.W-1, in cross-examination on 24.07.2015 and 01.10.2015, that she and her associates had trespassed into the schedule property on 05.04.2013; the present I.A. was filed on 19.11.2015, long after the petitioner had cross-examined P.W-1 suggesting the date of dispossession as 05.04.2013; even if it was the case of the petitioner that it was a typographical mistake in the written statement, and it was wrongly mentioned as 02.05.2013 instead of 05.04.2013, the same would not affect his rights and interest in the present case if he was able to prove, by oral or documentary evidence, the correct date of his dispossession from the schedule property; trial in the Suit had commenced long ago, and issues were framed on 02.09.2013; and the contention of the petitioner, that he could not move the application

at an appropriate time despite due diligence, could not be accepted. The I.A. was dismissed. Aggrieved thereby, the present revision.

Sri Ashok Kumar Agarwal, Learned Counsel for the petitioner, would contend that the petitioner had merely sought to correct the date of his dispossession as 05.04.2013 as he had earlier, by oversight, mentioned the said date as 02.05.2013; Courts should be liberal in permitting amendment of pleadings, more so when it related merely to correction of the date; and the Court below had erred in refusing to do so. Learned Counsel would rely on **Chintaparthi Venkataramana Reddy v. Nallam Rajamma**^[1] and **T. Pedda Veeramma v. P. Lakshmi Devi**^[2] in this regard.

It is not in dispute that the application, for amendment of pleadings, was filed only after all the witnesses, produced on behalf of the respondent-plaintiff, had been examined and after D.W-1 had filed his affidavit in lieu of chief-examination. Once trial has commenced, the proviso to Order 6 Rule 17 CPC is attracted. The said Proviso stipulates that no application for amendment shall be allowed after trial has commenced, unless the Court comes to the conclusion that, inspite of due diligence, the party could not have raised the matter before commencement of trial. The petitioner was, therefore, required to satisfy the Court below that his failure to raise the matter before commencement of trial was despite due diligence on his part.

In the affidavit, filed in support of the I.A, all that is stated is that recently on 16.11.2015, while he was preparing his evidence affidavit, the petitioner had noticed that the date of his dispossession from the suit schedule property by the respondent was mentioned in the written statement and additional written statement as 02.05.2013 in the place of 05.04.2013; the mistake was purely typographical, accidental and circumstantial but not intentional; and, hence, the same may be amended.

The date of dispossession was, admittedly, mentioned as 02.05.2013 not only in the written statement but in the additional written statement also. As is evident, from the order under revision passed by the Court below, the respondent-plaintiff had contended that the amendment

was sought to overcome the admission that the date was mentioned as 02.05.2013, and the document showed the date as 05.04.2013. The Court below has, in the order under revision, recorded its satisfaction that the averments, in the affidavit filed in support of the I.A, were vague and the petitioner did not satisfy the due diligence requirement of the proviso to Order VI Rule 17 CPC.

Order VI Rule 17 CPC, and its proviso, were amended by Act 22 of 2002 with effect from 01.07.2002 and, as such, reliance placed on the judgment in **Chintaparthi Venkataramana Reddy**¹, which was pronounced on 24.02.1987 prior to the amendment, is misplaced. In **T. Pedda Veeramma**², this Court observed that the proviso to Order VI Rule 17 was only a measure of caution against dilatory tactics; the real question to be considered was the genuineness of the application made seeking amendment; delay could be compensated by money, but should not come in the way of adjudicating the rights of the parties properly; if the amendment petition was filed after the trial had begun, it was obligatory on the part of the party seeking amendment to satisfy the Court that, inspite of due diligence, he could not make the application at the appropriate time; and the Court can allow the amendment petition, if it is satisfied that the party could not pursue the remedy of seeking amendment inspite of exercising due diligence.

In the present case the Court below, on the material placed before it, was satisfied that the petitioner did not fulfil the due diligence requirement of the proviso to Order VI Rule 17 CPC. The jurisdiction which this Court exercises, under Article 227 of the Constitution of India, is supervisory and not appellate and, save patent illegality in the order under revision, no interference is called for. The finding recorded by the Court below, that the petitioner did not fulfil the due diligence requirement, does not suffer from any such infirmity. I see no reason, therefore, to exercise discretion under Article 227 of the Constitution of India to interfere. The revision fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date: 17.06.2016.
MRKR

[\[1\]](#) AIR 1988 AP 40
[\[2\]](#) 2010 (5) ALD 746