

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.831 of 2017

ORDER:

This petition is filed under Article 227 of Constitution of India challenging the order dated 07.12.2016 in I.A.No.554 of 2013 in O.S.No.346 of 2010 passed by the II Addl. Senior Civil Judge (FTC), Guntur dismissing the application filed under Order VI Rule 17 and Section 151 CPC seeking leave of the court to permit the petitioners to amend the plaint.

2. The petitioners filed suit for permanent injunction and later the respondents filed written statement in the month of May, 2010 denying the title of the plaintiffs. But, the petition was filed on 12.09.2011 seeking leave of the court to convert the suit from injunction simplicitor to declaration of title. But, admittedly the plaintiffs examined PW-1 by the date of filing the petition. But, in view of the Proviso to Order VI Rule 17 of CPC incorporated by Act 22 of 2002 when the trial is commenced, no amendment can be permitted unless the petitioners prove that despite due exercise of due diligence, they could not bring those facts to the notice of the court. The affidavit is totally silent about the due diligence exercised by them in bringing the same to the notice of the court. In KAILASH v. NANHKU¹ the Full Bench of the Apex Court has considered as to the commencement of trial in a petition and held that in a civil suit, the trial begins when issues are framed and the case is set down for recording of evidence, all the proceedings before that stage are

¹ (2005) 4 SCC 480

treated as proceedings preliminary to trial or for making the case ready for trial. Therefore, the trial is deemed to have commenced when the issues were framed.

3. In the present case, admittedly PW-1 was already examined after framing issues and no explanation was given in the affidavit for their failure to amend the plaint appropriately and inability to amend the plaint and in the absence of exercise of due diligence, the petitioners are disentitled to claim leave of the court to amend the plaint after commencement of trial. Therefore, the trial Court has rightly dismissed the petition and I find no grounds to interfere with the order passed by the trial Court, consequently, the petition is liable to be dismissed.

4. In the result, revision petition is dismissed. There shall be no order as to costs.

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

M. SATYANARAYANA MURTHY, J

Date:12-07-2017
Ccm

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