

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

**C.R.P.No.4606 of 2017**

**ORDER:**

Heard the learned counsel for the petitioners.

2. This Civil Revision Petition is filed challenging the order dt.07-08-2017 in I.A.No.493 of 2017 in O.S.No.39 of 2010 of the II Additional Junior Civil Judge, Tadepalligudem.

3. Petitioners are defendant Nos.2 to 4 in the suit. The said suit was filed by the respondent Nos.1 and 2 herein for perpetual injunction restraining the petitioners and 3<sup>rd</sup> respondent from interfering with the possession and enjoyment of the plaint schedule property.

4. Written Statement was filed on 12-04-2010 by the petitioners opposing the suit claim. Thereafter, issues were framed and trial commenced and the matter is coming up for cross examination of D.W.1 in June 2017.

5. At that time, on 06-06-2017, respondent Nos.1 and 2 herein filed I.A.No.493 of 2017 seeking amendment of the plaint by adding para 7 (a) and also seeking relief of declaration of title to the property.

6. In the affidavit filed in support of the said application, they contend that their title was disputed by the petitioners and in fact, the property is not private property but Government assigned land

which was assigned originally to the grandfather of the respondent Nos.1 and 2; that it was settled on 18-06-1946 to their mother; and that she settled it on respondent Nos.1 and 2 on 26-11-2009 by registered settlement deed. It is contended that under the AP Assigned Land (Prohibition of Transfers) Act, 1977, the sale transaction in respect of the subject property, which is assigned property is void.

7. Counter affidavit was filed by the petitioners opposing this application denying the allegation that Government assigned the land and contending that amendment is being sought only with a view to protract the proceedings.

8. By order dt.07-08-2017, the Court below allowed I.A.No.493 of 2017. After advertent to the contentions of the parties, the Court below was of the view that there were subsequent events which have material bearing on the rights of the parties; that the proposed amendment relates to the original suit and is a continuity of plea in the suit; that it is in the nature of elaboration of the stand of the respondent Nos.1 and 2; and therefore it is just and proper to permit amendment of the plaint since it is necessary for the purpose of determining real question in controversy between the parties.

9. Assailing the same, this Civil Revision Petition is filed.

10. Learned counsel for the petitioners contended that as per the proviso to Order VI Rule 17 CPC, no amendment to the pleading

is permissible after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised it before the commencement of trial; that in the seven years period between the filing of the plaint by the petitioners in 2010 and June 2017, when the I.A.No.493 of 2017 was filed, the respondent Nos.1 and 2 did not exhibit due diligence, and so the application for amendment ought not to have been allowed by the Court below. He further contended that there are no subsequent events sought to be brought on record by the respondent Nos.1 and 2.

11. Learned counsel for the respondent Nos.1 and 2 however sought to support the orders passed by the Court below. He contended that since title of the respondent Nos.1 and 2 was disputed by the petitioners in their written statement, the respondent Nos.1 and 2 were advised by a new counsel engaged by them to seek relief of declaration also and that was why the application was filed.

12. It is not in dispute that the trial had already commenced by the date the application for amendment was moved by the respondent Nos.1 and 2. Since they were aware of the plea of the petitioners in the Written Statement even by the year 2010, they ought to have sought amendment immediately or at least prior to commencement of trial. But they did not do so. So they did not exhibit due diligence. Without noticing the legal position contained in proviso to Order 6 Rule 17 CPC, which prohibited amendments being

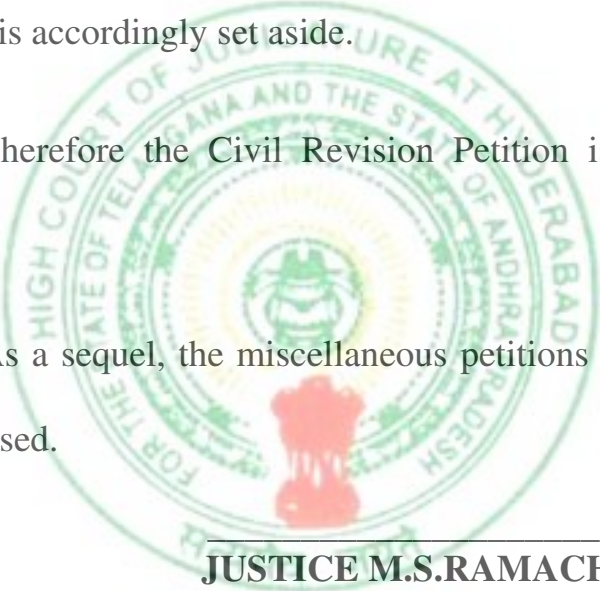
made after trial commenced, unless due diligence was shown, the Court below erred in allowing the application for amendment.

13. It is also not proper for the Court below to say that there were subsequent events warranting filing of the application for amendment. A perusal of the application for seeking amendment itself indicates that the events referred to were prior to filing the suit and cannot be termed as subsequent events.

14. In this view of the matter, the impugned order cannot be sustained and is accordingly set aside.

15. Therefore the Civil Revision Petition is allowed. No costs.

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



**JUSTICE M.S.RAMACHANDRA RAO**

Date: 22-09-2017

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