

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**CIVIL REVISION PETITION No. 6875 OF 2017**

**DATED 08<sup>TH</sup> DECEMBER, 2017**

Between:

T.Seshu and others

... Petitioners

AND

P.Bharathi Devi @ Andhra Bharathi

... Respondent

Counsel for the petitioners : Sri K.V.Simhadri

Counsel for the respondent : --



**THE COURT MADE THE FOLLOWING**

**ORDER:**

This civil revision petition arises out of order dated 15-09-2017 in I.A.No. 403 of 2017 in O.S.No. 124 of 2010 on the file of the Court of III Additional Junior Civil Judge, Visakhapatnam (for short, 'the Court below').

2. I have heard Sri K.V.Simhadri, learned counsel for the petitioners, and perused the record.

3. The petitioners filed the aforementioned suit for permanent injunction restraining the respondent from interfering with the suit schedule property. After the trial was completed and the suit was posted for arguments, the petitioners filed the aforementioned I.A. for amendment of the plaint in order to claim mandatory injunction for eviction of the respondent. At the hearing, learned counsel for the petitioners has submitted that though the respondent trespassed into a part of the suit schedule property in the year 2010, as proceedings arising out of appointment of advocate commissioner were pending before this Court and in view of stay of further proceedings in the suit, his clients could not file the application for amendment earlier.

4. Admittedly, the civil revision petition filed against the order of appointing advocate commissioner was disposed of in the year 2012. For five years, the petitioners herein have not filed the application for amendment. This Court in ***G.S.Prakash Vs. Polasa Hanumanlu***<sup>1</sup> after exhaustive consideration of the case law *inter alia* held that in case of pending or *post* trial amendments, the Court may allow the amendment if the applicant in addition to satisfying the condition that the nature and character of the suit is not altered also satisfies two other conditions, namely; (i) that the amendment is necessary for determining the real questions in controversy and (ii) that despite due diligence, the applicant could not move the application at an earlier stage. In the instant case, no explanation whatsoever was offered by the petitioners for not moving the application for amendment from the year 2012 when the civil revision petition was disposed of by this Court. The petitioners, having kept quiet for five long years and allowed the trial to be completed, cannot be permitted to file the application at their leisure. Though the Court below did not deal with the case in the manner it ought to have, as I am not satisfied with the conduct of the

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<sup>1</sup> 2015 (1) ALD 270

petitioners in filing the belated application at the stage of arguments,

I am not inclined to interfere with the order of the Court below.

5. The civil revision petition is accordingly dismissed.

6. As a sequel to dismissal of the civil revision petition,

C.R.P.M.P.No. 8837 of 2017 shall stand dismissed as infructuous.

Date: 08-12-2017.

JSK

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***C.V.NAGARJUNA REDDY, J.***

