

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 153 of 2018

ORDER :

This Revision is directed against the order dated 13.12.2017 in I.A. No. 1045 of 2017 in O.S. No. 133 of 2012 on the file of the III Additional District and Sessions Judge (FTC) at Ananthapuramu.

The suit was filed seeking declaration of title and for delivery of vacant possession of the suit schedule property. Petitioner herein is the 23rd defendant in the said suit. The plaintiffs' side evidence was closed and the defendants' evidence is yet to commence. It is at that stage, the present I.A. was taken out by the petitioner along with Defendants 4, 6 and 24 to 42, under Order VI Rule 17 of the Code of Civil Procedure to permit them to amend the written statement as shown in the Petition.

For better understanding, the parties are referred to as they were arrayed in the I.A.

The case of the petitioners in the I.A. was that originally, the land in Survey No. 306 admeasuring Acs.21.43 cents situated at Kurugunta Village Polam was the joint property of Respondents 2, 3 and 7. When they were in joint undivided hindu family, they had taken Acs.9.08 cents situated at Survey No. 690 of Kuderu Polam, which is the petitioners' ancestral property and gave the same to the legal representatives of Lakshmakka, who is their sister and in exchange of the same, Respondents 2, 3 and 7 gave Acs.9.08 cents to the ancestors of the petitioners. It is further stated that after receiving summons, when the petitioners enquired about the land in Survey No. 306 of Kurugunta Polam, the revenue authorities informed them that it is a government land, as such they informed

the same to their counsel and got prepared their written statement mentioning that the land in Survey No. 306 admeasuring Acs.9.08 cents is government land. It is further stated that due to illiteracy, they could not find out the mistake and failed to mention that the land in an extent of Ac.9.08 cents situated in Survey No. 690 which was in possession of their ancestors was exchanged for Survey No. 306-1 with the respondents. The mistake is a *bona fide* one. Therefore, they sought amendment of the written statement.

Respondents – defendants 7 to 22 and 43 to 49 filed their counter-affidavit specifically denying the allegation in the affidavit and stated that the Petition was filed at a belated stage, that too after closing the evidence of the plaintiffs and further, there is no proper and satisfactory explanation for seeking the amendment of the written statement at that stage.

After considering the respective submissions, the learned Judge had dismissed the Application on the ground that the petitioners, one way or the other, admitted that they were in possession and enjoyment of the land over an extent of Acs.9.08 cents, situated in Survey No. 306-1 and the plaintiffs have no right and title over the said property, whereas, now, they took a different plea that the said survey number belongs to the plaintiffs and their ancestors got exchanged Survey No. 609 and taken the land in Survey No. 306-1. Further, the plaintiffs' side evidence was closed and the matter was coming up for the evidence of the defendants. Therefore, amendment, which the petitioners sought now, would change the nature and character of the suit.

Heard learned counsel for the petitioner as well as learned counsel for the respondents.

In the present factual scenario, the moot question that falls for consideration is whether amendment can be ordered at the stage when, admittedly, the trial of the case commenced and the evidence on behalf of the plaintiffs was already recorded. The Supreme Court as well as this Court had repeatedly held that an Application seeking amendment of pleadings, especially after commencement of trial, could be allowed only when the Court comes to the conclusion that in spite of due diligence, the party seeking amendment could not have raised the issue before commencement of the trial.

In the case on hand, it may be noted that the suit is of 2012 and the written statement was filed on 24.02.2015. The plea, which the petitioner seeks to introduce through amendment of the written statement, is diametrically opposite to the plea taken originally. It may also be noted that if the amendment is allowed, at this stage, the entire of the suit complexion would change. Issues were framed based on the pleadings originally made and the trial has commenced. Except stating that the petitioners are illiterate and hence, could not take the plea in the manner in which they desire, there is no other explanation for the delay, much less a plausible and reasonable one. In other words, there is no satisfactory explanation forthcoming to the effect that the petitioners could not have taken the plea at the earliest point of time, at least, prior to commencement of trial. There is also no material for this Court to come to a definite conclusion that there was an insurmountable obstacle for the petitioners in not seeking the amendment which they seek now. In that view of the matter, the conditions precedent for allowing the amendment, as required under Order VI Rule 17 of the Code, not being satisfied, the

dismissal of I.A. by the Court below cannot be found fault. Hence, the order under Revision does not warrant any inference at the hands of this Court.

The Civil Revision Petition therefore, stands dismissed. No costs.

CHALLA KODANDA RAM, J

02.05.2018

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