

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1795 of 2018

ORDER :

This Civil Revision Petition is filed assailing the order dt.22.02.2018 in I.A.No.17 of 2018 in O.S.No.76 of 2013 on the file of the Junior Civil Judge, Pakala.

2. The petitioner herein is plaintiff in the above suit.
3. He filed the suit for a perpetual injunction against the respondents restraining them from interfering with his peaceful possession and enjoyment of the plaint schedule property.
4. After the evidence on the side of petitioner / plaintiff was completed and when the matter was at the stage of cross-examination of DW.2, the petitioner / plaintiff herein filed I.A.No.17 of 2018 under Order VI Rule 17 of Civil Procedure Code, 1908, seeking permission to amend the plaint and also seeking relief of declaration of title.
5. In the affidavit filed in support of the said application, the petitioner / plaintiff did not assign any reason why he could not seek the said amendment before commencement of trial.
6. The Court below held that in the written statement filed by the respondents itself the title of petitioner / plaintiff was disputed, that the said written statement was filed on 19.06.2013, but the petitioner did not seek amendment of the plaint seeking relief of declaration

immediately thereafter, and waited till December, 2017 to file this application; therefore, concluded that due diligence was not shown by the petitioner in filing this application, and rejected the said application.

7. Challenging the same, the present Civil Revision Petition is filed.

8. The counsel for petitioner / plaintiff contended that to avoid multiplicity of proceedings and further prejudice to petitioner, this Court ought to set aside the order passed by the Trial Court in exercise of its revisionary jurisdiction. He also placed reliance on the following decisions in **Pankaja and another v. Yellapa (D) by L.Rs and others¹** and **Abdul Rehman and another v. Mohd. Ruldu and others²**.

9. It is not in dispute that the Civil Procedure Code was amended in 2002, and a proviso was added to Order VI Rule 17 of Civil Procedure Code, 1908, which stated that “no application for amendment should be allowed after the trial has commenced unless the Court comes to the conclusion that in spite of due diligence the party could not have raised the matter before commencement of trial”.

10. The counsel for petitioner / plaintiff did not dispute that there is no averment in the affidavit filed in support of the amendment application as to why the petitioner / plaintiff could not seek

¹ AIR 2004 SC 4102

² 2012 (11) SCC 341

amendment of the plaint before the commencement of trial even though written statement itself was filed on 19.06.2013, denying the petitioner's / plaintiff's title. Therefore, the Court below cannot be blamed for dismissing the said I.A.

11. In **Pankaja** (1 supra), though the Supreme Court held that amendments to pleadings can be allowed to minimize litigation, the suit in the said case had been filed in 1994, much before the amendment to the Civil Procedure Code, 1908 in 2002 adding proviso to Order VI Rule 17. Therefore, the said decision has no application to the facts of the present case.

12. The decision in **Pankaja** (1 supra) had been followed in **Abdul Rehman** (2 supra).

13. In **Abdul Rehman** (2 supra), however, the trial had not commenced by the date the application for amendment was made by the plaintiffs therein. Therefore, the proviso to Order VI Rule 17 did not apply. Therefore, the said decision has no relevance.

14. For the aforesaid reasons, I am satisfied that the Court below had rightly exercised its discretion in refusing to permit amendment of plaint sought by petitioner long after the trial commenced.

15. Therefore, I see no reason to interfere with the order passed by the Court below. Accordingly, the Civil Revision Petition is dismissed at the stage of admission. No order as to costs.

16. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19.03.2018

Ndr/*

