

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

C.R.P.No.4976 of 2018

ORDER:

Heard the learned counsel for the petitioner.

2. This Civil Revision Petition is filed challenging the order dt.02-08-2018 in I.A.No.236 of 2018 in O.S.No.17 of 2013 of the Junior Civil Judge, Satyavedu.

3. Petitioner herein is plaintiff in the said suit. She initially filed the suit for perpetual injunction against the respondent. Subsequently I.A.No.265 of 2016 was filed for amendment of plaint seeking reliefs of declaration of title and delivery of possession. It was allowed on 22-09-2016. Another I.A.No.202 of 2018 was filed under Order VI Rule 1 CPC to amend plaint as petitioner's husband died and it was also allowed. In the meantime, the trial of the suit had commenced on 03-07-2014 and evidence of P.W.1 was completed.

4. On 26-07-2018, the petitioner filed I.A.No.236 of 2016 to amend the plaint by adding para-3A after para-3 in the body of the plaint. This application was opposed by the respondent pointing out that the trial of the suit had commenced on 03-07-2014 and the petitioner has filed this application only to protract the proceedings after keeping quiet all the while.

5. By order dt.02-08-2018, the Court below dismissed the said I.A. It took note of the fact that the trial of the suit had

commenced; that the plaint was amended twice and nature of the relief sought had been changed from one of permanent injunction to relief of declaration of title and delivery of possession, and ample opportunities have been given to the petitioner to bring all the facts before the Court; once trial commenced, unless the petitioner satisfies the Court that the petitioner, in spite of due diligence, could not have raised the matter before commencement of trial, it cannot be allowed. It held that when the plaint was amended and relief of declaration of title was added in the place of permanent injunction, it was the duty of the petitioner to bring all the relevant facts before the Court and the petitioner has not stated how failure to incorporate the facts would cause prejudice to the petitioner.

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

7. Learned counsel for the petitioner relied upon the decision of the Supreme Court in **Gurbakhsh Singh and others Vs. Buta Singh and another**¹, wherein the Supreme Court, in the facts of the said case, allowed amendment of the plaint after the trial commenced on the ground that the nature of the amendment did not change the character and nature of the suit and also did not introduce any fresh ground.

8. In my considered opinion, the said judgment was rendered invoking Article 142 of the Constitution of India and this Court does not have such power.

¹ 2018 (3) ALT 55 (SC)

9. Since the petitioner, in the instant case, admittedly had an opportunity to place all relevant facts including those which are now sought to be introduced by way of amendment, she cannot be permitted to amend plaint at this stage. When she had filed I.A.No.265 of 2016, the petitioner should have disclosed these facts too. Thus, the petitioner has not shown that in spite of due diligence, she could not raise the matter now sought to be introduced by way of amendment before the commencement of trial in the suit on 03-07-2014.

10. Therefore, in my opinion, the Court below did not commit any error of jurisdiction in refusing to allow I.A.No.236 of 2018.

11. Accordingly, the Civil Revision Petition fails and is dismissed at the admission stage. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-08-2018

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