

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.6827 OF 2017

ORDER :

This Revision is filed assailing the order dt.20.08.2017 in I.A.No.672 of 2017 in O.S.No.90 of 2010 on the file of Additional Senior Civil Judge, Chittoor.

2. The petitioners herein are plaintiffs in the above suit which was filed for perpetual injunction against the respondents.

3. The 1st plaintiff died, and petitioners are his legal heirs.

4. Though an affidavit in lieu of chief-examination was filed in February, 2017 by PW.1 mentioning about a Will executed in the 1st plaintiff's favour by one Rangamma, there was no mention about this Will in the plaint; and after the evidence of petitioners/ plaintiffs was closed on 11.08.2018, I.A.No.672 of 2017 was filed seeking amendment of the plaint to include the pleading about the Will referred to above.

5. The Court below dismissed the said application on the ground that after the evidence of plaintiffs' side comprising of PWs.1 to 4 was closed and chief affidavit of DW.1 was filed, the application for amending the plaint mentioning about the will, was filed. It held that as per proviso to Order 6 Rule 17 C.P.C., no application for amendment shall be allowed after the trial has commenced unless the Court comes to the conclusion in spite of due diligence the party could not have raised the matter before commencement of the trial, and that the petitioners did not assign any reason for not mentioning about the said Will in the plaint or not taking steps to

seek amendment of the plaint before the evidence of plaintiffs' side was closed.

6. Aggrieved thereby, the present Civil Revision Petition is filed.

7. Though counsel for petitioners sought to contend that grave prejudice would be caused to petitioners if the application for amendment is not allowed, particularly when chief-examination affidavit was filed mentioning about the Will, the fact remains that there was gross negligence on the part of petitioners in not filing an application for amendment of the plaint along with the chief-examination affidavit of PW.1. They waited for the evidence on the plaintiffs' side to be closed before filing this application for amendment of the plaint.

8. Therefore, there are no valid reasons given by petitioners for seeking amendment of the plaint after the trial commenced and so the Court below was correct in applying the proviso to Order 6 Rule 17 C.P.C. and rejecting I.A.No.672 of 2017.

9. I therefore see no reason to interfere with the order passed by the Court below.

10. Accordingly, the Civil Revision Petition is dismissed as the stage of admission. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 19.01.2018

Ndr/*