

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

**C.R.P.No.5156 of 2013**

**ORDER:**

Heard Sri G.Subash, learned counsel for the petitioners and Sri V.Ravinder Rao, learned Senior Counsel, appearing for the respondents.

2. This Revision Petition is filed assailing the order dt.23-08-2013 in I.A.No.346 of 2012 in O.S.No.19 of 2007 of the Family Court-cum-Additional District Judge, Adilabad.

3. Learned counsel for both sides state that the suit has since been transferred to VII Additional District Judge at Nirmal, Adilabad District.

4. Petitioners herein are the defendant Nos.1, 4 and 5 in the said suit.

5. Respondent Nos.1 and 2 filed the said suit for declaration of title and for perpetual injunction apart from rectification of revenue entries in respect of the suit schedule property. Subsequently, they contended that in February 2011, the petitioners and other defendants had dispossessed them and this requires an amendment of the plaint and so they filed I.A.No.346 of 2012.

6. Counter affidavit was filed by petitioners and other defendants opposing the said amendment and pointing out that the trial has been closed on 29-02-2012 and the case is posted for arguments. They

contended that the respondent Nos.1 and 2 knew that they were not in possession of the property, but yet they filed I.A. alleging dispossession of the property; that the proposed amendment would cause prejudice to the petitioners and other defendants; and after commencement of trial, said amendment cannot be allowed. They also stated that the respondent Nos.1 and 2 can seek relief under Section 144 CPC or avail remedy under Section 6 of the Specific Relief Act, if the suit is pending.

7. By order dt.23-08-2013, the Court below allowed the said application. After referring to the contention of the parties, it held that an amendment based on subsequent events can be permitted, if the Court is otherwise satisfied about the diligence of the applicant seeking amendment. It held that the proposed amendments sought are based on subsequent events and therefore within limitation, and if the amendment application is allowed, it would avoid multiplicity of proceedings because otherwise the respondent Nos.1 and 2 would be driven to file a separate suit for recovery of possession.

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

9. Learned counsel for the petitioners reiterated the contentions in the Court below made by the petitioners/defendant Nos.1, 4 and 5 and contended that the Court below ought not to have allowed the application for amendment and the respondent Nos.1 and 2 should have filed a petition under Section 144 CPC.

10. Sri V.Ravinder Rao, learned counsel for the respondents, refuted the said contentions and supported the order passed by the Court below. He also relied on a decision of this Court in **Sanapala Ramanujulu @ Ramanuja Charuylu Vs. Sanapala Sridhrudu (died) and others**<sup>1</sup>.

11. The Supreme Court in **Rajesh Kumar Agarwal and others Vs. K.K.Modi and others**<sup>2</sup> had observed while considering Order VI Rule 17 CPC:

16. The object of the rule is that Courts should try the merits of the case that come before them and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties provided it does not cause injustice or prejudice to the other side.

17. Order VI Rule 17 consist of two parts whereas the first part is discretionary (may) and leaves it to the Court to order amendment of pleading. The second part is imperative (shall) and enjoins the Court to allow all amendments which are necessary for the purpose of determining the real question in controversy between the parties.

18. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new

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<sup>1</sup> 2014 (2) ALD 365

<sup>2</sup> 2006 (3) ALD 61

suit cannot be permitted to be incorporated in the pending suit.”

It thus held that if a cause of action arises during pendency of the suit, amendment on the basis of such cause of action can be permitted since the basic structure of the suit did not change and there was only a change in the nature of the relief claimed.

12. Admittedly, the application for amendment was made in the instant case on 20-09-2012 and it was allowed later on 23-08-2013, and merely because the trial in the meantime got completed and the matter was posted for arguments, petitioners cannot contend that the application for amendment cannot be considered.

13. In the instant case, when the trial was pending, in February 2011, the alleged dispossession of the respondent Nos.1 and 2 took place. Therefore, the respondent Nos.1 and 2 cannot be accused of not seeking amendment of the plaint before the trial commenced.

14. In **Sanapala Ramanujulu @ Ramanuja Charuylu** (1 supra), this Court upheld the power of the Court below to permit amendment of the plaint when subsequent events have necessitated such amendments.

15. In **Sampath Kumar Vs. Ayyakannu**<sup>3</sup>, the Supreme Court held that if pending suit for injunction, plaintiff claimed to be

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<sup>3</sup> (2002) 7 S.C.C. 559

dispossessed, he can be permitted to amend the plaint and seek recovery of possession and basic structure of the suit is not altered.

16. For the aforesaid reasons, I hold that Court below did not commit any error of jurisdiction in allowing I.A.No.346 of 2012 permitting respondent Nos.1 and 2 to amend the plaint.

17. Accordingly, the Civil Revision Petition fails and is dismissed. The petitioners shall be permitted to amend the Written Statement suitably so that they do not suffer any prejudice on account of the respondent Nos.1 and 2 amending the plaint. No costs.

18. Interim order granted earlier is vacated.

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

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 08-02-2019

Note:-

Office to communicate this order to  
the VII Additional District Judge,  
Nirmal, Adilabad District.

B/o.

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