

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

C.R.P.No.3960 of 2015

O R D E R:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.01.08.2015 in I.A.No.13 of 2015 in O.S.No.450 of 2008 of the XIII Additional Senior Civil Judge, (FAC) III Senior Civil Judge, City Civil Court, Secunderabad.

2. Petitioners are defendants in the suit.
3. The said suit was filed by the respondent/plaintiff against the petitioners for a Perpetual Injunction restraining the petitioners from proceeding with construction in the suit schedule property bearing Municipal No.1-8-315 admeasuring 200 sq. yards on the northern side as described in the plaint schedule.
4. It was alleged in the plaint by the respondent that the petitioners were proceeding with construction in the said area ignoring the respondent's objections; that they were trying to encroach upon the suit schedule property, which belongs to the respondent, by raising pillars and laying beams and projections; and that the construction of the petitioners is without leaving any set backs.
5. Written Statement was filed by the 1st petitioner denying the plaint allegations and also denying the title of the respondent to the suit schedule property. It was their contention that there was already an existing house by the time petitioners purchased the property and there was no question of starting construction. They

alleged that they were making repairs and the same was within the knowledge of the respondent.

6. Along with the suit, respondent had filed I.A.No.1721 of 2008 to appoint an Advocate-Commissioner and the said application was allowed.

7. The Advocate-Commissioner visited the suit schedule property on 15.11.2008 and filed a report stating that in the suit schedule property certain constructions were made without leaving setbacks.

8. After trial commenced, respondent filed I.A.No.13 of 2015 seeking amendment of the prayer in the suit alleging that though the respondent had also obtained temporary injunction against the petitioners, after the evidence of the respondent was completed, petitioners illegally commenced and completed construction on the northern and southern side of the respondent's property to the extent of 80 sq.yds., and this was done because the suit was posted to longer dates. He therefore sought to amend the prayer in the suit as well as add paragraphs 4(a), 5(a), 8(a) and 9(a) in the plaint, and also sought mandatory injunction to direct the petitioners to remove the illegal construction to the extent of 80 sq. yards out of the plaint schedule property, and in default, to get them removed departmentally.

9. Counter affidavit was filed by the petitioners opposing the said application. They contended that it was not maintainable and was filed only to drag on the matter and harass the petitioners. They denied the allegation of encroachment made by the respondent and

contended that the constructed portion is in the petitioners' own property and had been made prior to 2008 and therefore the temporary injunction would not bind them and they did not flout it. They also contended that the application seeking amendment of plaint after five years of the suit is not maintainable.

10. By order dt.01.08.2015, the Court below allowed the said application. It followed the decision of this Court in ***Boya Pikkili Pedda Venkataswamy v. Boya Ramakrishnudu***¹, wherein this Court had held that if there were subsequent events occurring after filing of the suit, application for amendment can be entertained and ordered.

11. Assailing the same, this Revision is filed.

12. Sri M.A.K.Mukheed, Counsel for petitioners sought to contend that the application filed to amend the plaint is a frivolous application and that such application cannot be entertained.

13. I disagree with the said contention since the question, whether it is frivolous or not, cannot be decided at the time when the application for amendment is being considered, and if, after trial the allegation in the amendment application is found to be incorrect, the Court may deny the amended relief to the respondent/plaintiff.

14. Secondly, counsel for the petitioner contended that it would amount to changing the nature of the suit.

¹ 2013(2) ALT 214

15. The said contention also cannot be accepted in view of the decision in ***Adusumilli Venkateswar Rao and another v. chalasani Hymavathi***² wherein this Court had taken the view that a suit for injunction can be converted into a suit for possession and such conversion does not amount to alteration of the nature of the suit. Similar view was also taken in ***Sampath Kumar v. Ayyakannu and another***.³

16. Thirdly, it is contended by the counsel for petitioners that because of the *proviso* to Order VI Rule 17 CPC, once trial has commenced, application for amendment could not have been allowed in the absence of due diligence being shown by the plaintiff.

17. When the very case of the respondent/plaintiff was that after the filing of the suit the alleged encroachment took place, the respondent could not have mentioned about the encroachment when he filed the suit in September, 2008. Therefore, it cannot be said that respondent did not exhibit due diligence in not seeking the amendment before the trial commenced, when his specific case in the application for amendment was that the alleged encroachment took place in violation of temporary injunction order granted in his favour on 14.10.2014. Therefore, this contention is also without any merit.

18. Lastly, counsel for petitioners contended that when the respondent filed the suit stating that he was in possession and enjoyment of the plaint schedule property on the date of filing of the

² AIR 1990 AP 161

³ AIR 2002 SCC 3369

suit, he cannot take a plea subsequently that he has been dispossessed subsequently. He placed reliance on the decision of this Court in **Chandan Singh and Others v. Gurala Ramulu and Others**⁴.

19. In the said judgment, the plaintiff therein sought alternative relief to the original relief of injunction that if he is found to be not in possession, he may be granted the relief of possession. Such is not the situation in the present case. Therefore, the said decision has no application.

20. Counsel for petitioners also relied on the judgment of the Supreme Court in **B.K.N.Narayana Pillai v. P.Pillai and Others**⁵ wherein the Supreme Court observed that no amendment should be allowed, which defeats the legal rights accruing to the opposite party, on account of lapse of time.

21. Delay in filing the application cannot be made as a ground for rejection, since in the instant case, the cause for amendment, according to the respondent occurred after filing of the suit. Therefore, the said decision has also no application.

22. To avoid multiplicity of proceedings, the application for amendment, in my considered opinion, was rightly allowed by the Court below and the petitioners cannot complain that they have suffered any prejudice on that account because they would be

⁴ 2015(3) ALD 512

⁵ 2000(1) SCC 712

entitled to file an amended written statement and both parties would be entitled to lead evidence on their respective amended pleadings.

23. I therefore do not find any merit in this Civil Revision Petition and it is accordingly dismissed at the admission stage. No order as to costs.

24. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

26th February, 2019.

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