

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

**C.R.P. No.6759 of 2018**

**O R D E R:**

This Revision is filed assailing the order dated 16.08.2018 in I.A.No.1121 of 2018 in O.S.No.1134 of 2013 of Principal Junior Civil Judge, Warangal.

2. Petitioner is the plaintiff in the suit. Initially he filed the suit for declaration of title, permanent injunction and mandatory injunction against the respondents alleging that he was in possession of the plaint schedule property and that respondent No.1 is trying to dispossess him.

3. On 09.07.2018, petitioner filed I.A.No.1121 of 2018 under Order VI Rule 17 CPC to amend the plaint by substituting paragraph 12 and adding certain sentences to paragraphs 13, 15 and 17.

4. Petitioner contended that though he was in possession on the date of filing of the suit, the 1<sup>st</sup> respondent had illegally occupied the suit schedule property in June, 2014. Therefore, he is entitled to seek recovery of possession of the property by amending the prayer in the suit, by paying the requisite Court fee.

5. This application was opposed by the 1<sup>st</sup> respondent contending that the pleadings in I.A.No.1121 of 2018 made by the petitioner were false. It was contended that in the suit, the trial has already commenced, that PW.1 has been cross-examined, and that the 1<sup>st</sup> respondent was in

possession of the plaint schedule property and P.W.1 had also admitted that he was not in possession of the plaint schedule property. It is pleaded by respondent that he was in possession of the property from 03.07.2005 and be continued to be in possession of the property. He also contended that if the application is allowed it would change the nature of the suit.

6. By order dated 16.08.2018, the Court below dismissed the application for amendment. It held that suit was filed on 04.12.2013 and in the plaint petitioner had contended that he was in possession of the suit schedule property and only after P.W.1 was partly cross-examined, this application for amendment was filed; and in the cross examination, P.W.1 has admitted that at present the 1<sup>st</sup> respondent was residing in the suit schedule property. In the cross-examination of P.W.1, it also referred to a case in CC.No.139/2012 that had been filed against Bhadramma/1<sup>st</sup> respondent in CC.No.139/12 on the file of I Additional JFCM and that it ended in acquittal.

7. Apart from this, it also referred to evidence of other witnesses on the part of the petitioner i.e. P.W.2 to 6 and also stated that they have admitted that respondents are residing in the property. Reference was also made to O.S.No.550/2010 earlier filed by the petitioner before II Additional JFCM, Warangal wherein interim injunction application was rejected. The Court below then gave a finding

that possession of the suit schedule property since 2010 was not with the petitioner. It also observed since the trial commenced, as per the amended provisions of CPC, party cannot be permitted to amend the suit.

8. Assailing the same, this Revision is filed.

9. Counsel for the petitioner contends that the Court below erred in dismissing the application for amendment and going into the correctness of the case set up in the amendment petition while deciding whether or not to allow the application for amendment.

10. Though the counsel for the 1<sup>st</sup> respondent refuted the same, a reading of the order of the Court below clearly indicates that the Court below has gone into the falsity of the case set up in the amendment petition while deciding whether or not the amendment application should be allowed. This is prohibited as per the decision of this Court in ***Edla Shobha Rani v. Yegurla Rambabu and others***<sup>1</sup>, ***Pathikonda Gopal Rao v. Nagiri Pedda Kitamma***<sup>2</sup>, and ***K.Ram Reddy v. K.Kantha Reddy and others***<sup>3</sup>.

11. The further observation by the Court below that allowing the application for amendment would change the nature of the suit itself is also not correct in view of the decision of this Court in ***Adusumilli Venkateswar Rao and***

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<sup>1</sup> 2005 (2) ALD 40

<sup>2</sup> AIR 1955 Andhra 138

<sup>3</sup> 1997 5 ALT 603

***Another v. Chalasani Hymavathi***<sup>4</sup> and of Supreme Court in ***Sampath Kumar vs. Ayyakannu and Another***<sup>5</sup>.

12. Therefore, the Civil Revision Petition is allowed, Order dated 16.08.2018 in I.A.No.1121 of 2018 in O.S.No.1134 of 2013 of the Principal Junior Civil Judge, Warangal is set aside; the said I.A is allowed; the Court below is directed to permit the petitioner to amend the plaint and carry out the consequential amendments also; and grant time to the respondent to amend the written statement; and proceed to decide the suit in accordance with law un-influenced by any observations made by it in the order dated 16.08.2018 in I.A.No.1121 of 2018 in O.S.No.1134 of 2013. No costs.

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

**M.S.RAMACHANDRA RAO, J**

13.02.2019  
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<sup>4</sup> AIR 1990 AP 161

<sup>5</sup> AIR 2002 SC 3369