

**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

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**CIVIL REVISION PETITION No.93 of 2015**

**ORDER:**

The petitioner herein is the plaintiff in O.S.No.205 of 2005. He filed I.A.No.335 of 2014, under Order VI Rule 17 CPC, to permit him to amend the plaint adding the relief of declaration of his right and title over 'B' schedule property.

By the order under revision dated 14.11.2014, the Principal Junior Civil Judge, Madanapalle held that the suit is of the year 2005; the said suit was filed to direct the defendants to divide 'A' schedule property, allot plaintiff 'B' schedule property to the petitioner, and for a permanent injunction restraining defendants 9 to 12 from interfering with his peaceful possession and enjoyment over the plaintiff 'B' schedule property; defendant Nos.9 to 12 filed their written statements denying the petitioner's claim over the schedule property; evidence on both sides was completed on 23.08.2012; when the matter stood over for arguments from 05.09.2012 onwards, the petitioner filed a petition to implead defendant No.13, who is his wife, in the suit, and petition was allowed; after getting her on record as defendant No.13, and when proceedings were in progress, the petitioner filed the present petition; as defendant Nos.9 to 12 had filed their written statements in 2005 itself denying the petitioner's claim over 'B' schedule property and had, thereafter, let in evidence, the petitioner had knowledge regarding their denial of his right and title much earlier; he did not take any steps to seek amendment of the prayer to add the declaration of his right; no explanation was offered by the petitioner for not taking steps to amend the plaint; he had come with the application only after the evidence of both sides was completed, and the matter was at the fag end.

The proviso to Order VI Rule 17 CPC precludes an application

for amendment being allowed after commencement of trial unless the Court comes to conclusion that, inspite of due diligence, the party could not have raised the matter before commencement of trial. As the written statement was filed by defendants 9 to 12 in the year 2005 itself, it is evident that the plaintiff had knowledge of their having denied his right and title over plaint 'B' schedule property even before commencement of trial; and it could not, therefore, be said that, inspite of due diligence, the petitioner could not seek amendment before commencement of trial. The I.A. was, accordingly, dismissed.

Before this Court, Sri N.Pramod, learned counsel for the petitioner, would reiterate the very same submissions which were urged before the Court below. As noted by the Court below, the written statement was filed in the year 2005, and evidence was let in by the witness thereafter. It is only at the stage of arguments that this petition has now been filed. Even before this Court, the petitioner has not been able to show his having satisfied the due diligence test. I see no reason, therefore, to exercise discretion under Article 227 of the Constitution of India to interfere.

As the order of the Court below does not suffer from any patent illegality, the Civil Revision Petition fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

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**RAMESH RANGANATHAN, J**

13<sup>th</sup> February, 2015.

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