

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 7TH DAY OF JANUARY 2015/17TH POUSHA, 1936

CRP.No. 684 of 2013

**IA.523/13 IN IA.627/11 AND IA.628/11 IN OS.161/1995 OF SUB COURT, KASARAGOD,
DATED 21/10/2013**

REVISION PETITIONER(S):

**NIRMALA V.BALIGA
W/O VAMANA BALIGA, SREE MADANANDHESWARA CHATHRAM
HOSABETTU VILLAGE, POST MANJESWARAM, KASARAGOD TALUK
KERALA STATE.**

**BY ADVS.SRI.T.KRISHNAN UNNI (SR.)
SRI.SAJU.S.A
SMT.P.A.SHEEJA
SRI.K.C.KIRAN**

RESPONDENT(S):

**M.N.ABBAS,
S/O. MOHAMMED, SHAN VILLA, HOSANGADY,
BADEJA VILLAGE, POST MANJESWARAM,
KASARAGOD DISTRICT 671323.**

**BY ADVS. SRI.P.B.KRISHNAN
SMT.GEETHA P.MENON
SRI.P.M.NEELAKANDAN
SRI.P.B.SUBRAMANYAN**

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

PJ

P.BHAVADASAN, J.

C.R.P. No. 684 of 2013

Dated this the 07th day of January, 2015

ORDER

Under challenge is the order dated 21.10.2013 in I.A.No. 523/2013 in I.A.Nos.627/2011 and 628/2011 in O.S.No.161/1995 before the Subordinate Court, Kasaragod.

2. The petitioner before this Court was the defendant against whom O.S.No.161/1995 was filed by the respondent herein for a decree for specific performance. The suit was decreed in favour of the plaintiff and he took out execution. When the document was sought to be executed through court, it was realized that there was a mistake in the name of the Village shown in the plaint as well as in the decree and therefore reserving the liberty to file proper application for execution of the sale deed, the two I.A.s for correction were proceeded with.

3. I.A.No. 627/2011 was filed to amend the plaint incorporating the name of the Village of the suit property

and I.A.No.628/2011 was filed to amend the decree in accordance with the plaint schedule as amended. The trial court, on consideration of the provisions of the Specific Relief Act, found that it has ample jurisdiction over the matter and allowed those two applications. Those orders were challenged in O.P.(C) 2576/2012. This Court by order dated 29.11.2012 did not interfere with the finding of the trial court and it had jurisdiction to deal with the matter but allowed the original petition and remanded the matter with the following direction:

“The petitioner on the other hand refers to the reports filed by the Advocate Commissioner and also the application in I.A.No. 628/2011 to contend that the property is one and same. It is also asserted that Hosabettu Village does not contain a property in R.S.No. 225/3. All these are matters to be considered by the court below on the basis of the evidence let in. The absence of finding in

this regard in the order impugned prompts me
to remand the matter for this limited purpose.”

4. After remand, the trial court reconsidered I.A.Nos.627/2011 and 628/2011. By order dated 19.08.2013, quite shockingly, the trial court held that it had no jurisdiction to consider the petitions for amendment and dismissed both the applications. That compelled the plaintiff in the suit to seek review by way of I.A.No.523/2013 in I.A.Nos. 627/2011 and 628/2011. The review petition was allowed by order dated 21.10.2013 whereby the court held that it had jurisdiction to entertain the matter and also found that the prayer sought for is proper and genuine and granted the relief. It is the said order that is assailed before this Court.

5. The main contention raised by the learned counsel for the petitioner is that even assuming that there was error in finding regarding jurisdiction, all that the court could have done was to allow the review application and take up

I.A.Nos.627/2011 and 628/2011 for fresh consideration and those applications could not have been disposed of along with the review petition.

6. Though the argument may look attractive, it is without any basis whatsoever. First of all, it is not shown that any prejudice is caused to the petitioner by the above course adopted by the court below. Further, the order which was sought to be reviewed, dismissed both the I.A.s namely I.A.Nos. 627/2011 and 628/2011. It was that order that was sought to be reviewed by filing I.A.No. 523/2013. That means the orders passed on those two I.A.s were under challenge in the review petition. If that be so, the court below, in allowing the review petition, was bound to consider the merits of I.A.Nos. 627/2011 and 628/2011 also.

7. It may be noticed here that after remand, the parties adduced evidence and the evidence consists of the testimony of AW1 and AW2 who were examined on behalf of the petitioner before the court below and Exts. A1 and A2

were marked from his side. The respondent did not adduce any evidence. Ext.X1 was a third party exhibit marked through court.

8. The petitioner has spoken to his case and it is interesting to note that before this Court in O.P.(C) No.2576/2012, the main grievance was that the identity of the property was sought to be changed. One would have expected the respondent to go into the box after remand to substantiate her plea. Instead the respondent before the court below did nothing. The court below therefore found that on the evidence on record, the mistake committed in showing the name of Village in the decree and in the plaint schedule was a bonafide mistake and that needs to be corrected in the interest of justice. Accordingly, the court below allowed the petition.

There is no illegality, irregularity or impropriety in the order passed by the court below warranting interference under Section 115 of C.P.C.. This petition is without merits

and it is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

ds

//True copy//

P.A. to Judge