

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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**CIVIL REVISION PETITION No.686 of 2015**

**ORDER:**

Heard the learned counsel for petitioners and the learned counsel for respondents.

2. The petitioners herein are plaintiffs in O.S.No.30 of 1988 on the file of the Court of the Senior Civil Judge, Pithapuram (for short, trial Court). They filed the above suit for partition of the suit schedule properties. The trial Court decreed the suit by its judgment and decree dated 11.04.1990 by passing a preliminary decree. Against the said judgment and decree, respondents 1 and 2 herein who are defendants 2 and 3 in the said suit, filed A.S.No.48 of 1990 on the file of the Court of III Additional District Judge, Kakinada. The Court of III Additional District Judge, Kakinada, by its judgment and decree dated 03.08.1998, allowed A.S.No.48 of 1990 and remanded the suit to the trial Court for fresh disposal. Thereafter the trial Court decreed the suit by its judgment and decree dated 31.03.2001. Challenging the same, respondent No.4 herein who is defendant No.4, filed A.S.No.77 of 2001 on the file of the Court of the V Additional District Judge (Fast Track Court), East Godavari at Rajahmundry and the same was dismissed on 28.07.2004 confirming the judgment and decree of the trial Court in O.S.No.30 of 1988 dated 31.03.2001. Challenging the same, respondent No.4 preferred Second Appeal No.10 of 2005 before this Court and this Court modified the decree, by judgment and decree dated 28.12.2010.

3. During the pendency of A.S.No.77 of 2001, the petitioners filed I.A.No.110 of 2005 in O.S.No.30 of 1988 seeking to amend the preliminary decree dated 31.03.2001 and the said application was dismissed by the trial Court, by order dated 19.01.2015, challenging which, the present Civil Revision Petition is filed.

4. The amendment sought to the preliminary decree, when the appeal was pending against the preliminary decree, is as follows:

“(1) In Para 2 of the decree, it is to be substituted as Ac.1-29 cents, 72 sq. yards site & property covered under the sale deed dt.4.7.66 and Ac.0-29 cents in S.No.120/5, instead of Ac.1-30 cents and Ac.0-10 cents of house site.

(2) In valuation para at clause (b), plaintiff's share to be substituted as 5/40<sup>th</sup> share and the value to be shown as Rs.1,265.50p instead of 4/40<sup>th</sup> share and its value Rs.1,765p.

(3) In decree portion in the 1<sup>st</sup> clause, it is to be substituted as 72 sq. yards of site covered under Ex.B-1 and vacant sites in 1<sup>st</sup> Ward consisting two items covered under Ex.B.3 dt.4.7.66 instead of vacant sites covered under the sale deeds in the Ex.B-1 & B-3.

(4) It is also to be shown the allotment of shares that are to be entitled by the parties in the above schedules.”

5. A counter-affidavit was filed by the fourth respondent stating that the decree has not become final, and since there is already an appeal before District Court as well as the High Court, the application has to be filed before the High Court only. The application was ultimately dismissed by the trial Court on 19.01.2015 with the following observations:

“9. On perusal of preliminary decree and judgment, it is clear that decree was drafted as per the conclusions arrived in the judgment. I do not find any typographical mistakes in the decree as pleaded by the petitioners herein. Furthermore, against the decree and judgment in O.S.30/1988 passed on 31.3.2001, respondents herein preferred appeal before V Addl. District Judge's Court, Rajahmundry in A.S.77/01 and the same was dismissed. Against that decree and judgment, respondents again preferred S.A.10/2005 before the Hon'ble High Court of A.P and said appeal was allowed partly by setting aside Clause (2) of decree in O.S.30/1988 passed on 31.3.2001. If the petitioners have any grievance against the calculation arrived in the judgment dt.31.3.01 of trial Court in O.S.30/1988, the petitioner ought to have raised objections before the Appellate Court or petitioners have to seek necessary amendment, if any, before disposal of first appeal, but the petitioners not made any such attempt as well as the petitioners not made any attempt to get back the record for disposal of this application and it

seems that the petitioners also not brought the alleged typographical mistakes to the notice of Appellate Court. Now, the petitioners filed this application seeking amendment of preliminary decree dt.31.3.2001 i.e. after disposal of first appeal and during the pendency of second appeal without raising any objection in respect of the decree in both the Appellate Courts. Now, as seen from the judgment of Hon'ble High Court in S.A.10/2005, the Hon'ble High Court set aside decree and judgment of this Court dt.31.3.2001 to the extent of exclusion of Ac.1-29 cents in Patta No.19, S.No.102/1 covered under Ex.B-2 dt.28.6.1952 from partition and declared the said land also to be liable for partition in accordance with preliminary decree for partition dt.11.4.1990 except to the extent of Ac.0-50 cents in S.No.102/3 and Patta No.16 covered by Ex.B-8 dt.1.8.1987 and the second appeal is allowed in part. Since the decree dt.31.3.2001 was partly set aside and the decree dt.31.3.2001 was drafted in accordance with the conclusions of the judgment, I do not find any merits in the present application. Accordingly, this petition is liable to be dismissed."

6. The above facts show that the petitioners filed the application for amendment of preliminary decree after four years of passing the said decree and that too after its remand by the lower appellate Court. There is nothing on record to show that the petitioners filed such an application before the lower appellate Court when the appeal was pending. The petitioners also did not bring it to the notice of this Court when S.A.No.10 of 2005 was disposed of and the decree passed by the trial Court on 31.03.2001 was merged with the decree passed by this Court in S.A.No.10 of 2005 dated 28.12.2010. Hence, the dismissal of the application of the petitioners is proper and this Court sees no illegality in the impugned order passed by the trial Court.

7. Hence, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

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**A.RAMALINGESWARA RAO, J**

Date: 23.11.2015

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