

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

CIVIL REVISION PETITION No.4417 OF 2015

ORDER:

The petitioner, who is plaintiff in O.S.No.790 of 2007 on the file of the Principal Junior Civil Judge, Tirupati, is aggrieved by the order passed by the said Court in I.A.No.676 of 2015, dated 28.09.2015, in disallowing the same for amendment of the prayer.

The facts of the case show that in the said suit filed for partition, so far as schedule is concerned, there are two Items namely, Old Survey No.23 and Old Paimash No.10. The petitioner has originally mentioned in the plaint the extent in Item No.1 as Ac.1.50 cents, out of Acs.2.82 cents in Old Survey No.23, New Survey No.177/4. After the trial is completed and when the suit is posted for arguments, the petitioner states that she was recalled on the request of the defendant and further cross-examined in August, 2015. Thereafter, noticing the mistake in the extent mentioned in Item No.1, referred to above, the present application is filed seeking to correct the same as Acs.2.82 cents instead of Ac.1.50 cents. The said application has been opposed and dismissed by the Court below under the impugned order.

I have heard learned counsel on either side, who have contended their respective claims for and against the said I.A.

It is evident from the record that the plaint schedule is described as Items 1 and 2 and the total extent as Acs.3.91 cents. The said extent 'Acs.3.91 cents' would be arrived only if Item No.1 is Acs.2.82 cents. The petitioner now seeks to correct the mistake in describing Item No.1 as Ac.1.50 cents to Acs.2.82 cents. In fact, the written statement filed by the respondents clearly show that they are aware of the total extent of the said survey number under Item No.1 and they have pointed out expressly in written statement the error is not denoting the said extent. Hence, in my

view, the amendment if permitted would not cause any prejudice to the respondent nor would lead to further delay in trial and disposal of the suit.

Hence, the Civil Revision Petition is allowed, subject to the following directions:

- i. The impugned order is set aside and I.A.No.676 of 2015 is allowed permitting the plaintiff to amend Item No.1 of plaint schedule as Acs.2.82 cents instead of Ac.1.50 cents.
- ii. The petitioner/plaintiff however shall not be entitled to file any further application either for examining any witness or for adducing further evidence consequent upon the said amendment.
- iii. The respondents/defendants shall be entitled to file additional written statement to the extent of the said amended prayer and thereafter the Court below shall fix a date for hearing and disposal of the suit and then decide the same expeditiously, in any case before 31.12.2015.

There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in the Civil Revision Petition shall stand closed.

VILAS V.AFZULPURKAR, J

20.11.2015

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