

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 4566 OF 2014

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dated 28.10.2014 in I.A.No. 657 of 2014 in O.S.No. 160 of 2011 of the Principal Junior Civil Judge, Narsapur, West Godavari District.

2. Petitioner herein is the defendant in the above suit. Respondent/plaintiff filed the suit against the petitioner for specific performance of an agreement of sale in respect of an extent of Ac. 0.2 ½ cents within the specified boundaries mentioned in the plaint schedule in S.No. 70/11.

3. Written statement was filed by the petitioner opposing the suit claim. It is not disputed that no plea was raised in the written statement by the petitioner that the survey number shown in the plaint is incorrect.

4. Issues were framed and trial commenced.

5. At that stage, the respondent/plaintiff filed I.A.No. 657 of 2014 to amend the plaint schedule by correcting survey number mentioned therein as R.S.No. 70/11 instead of R.S.No. 70/10.

6. In the affidavit filed in support of the said application, it was specifically contended by the respondent that at the time when the agreement of sale was instituted, specific boundaries were mentioned therein and the respondent was informed by the father of the petitioner that the survey number R.S.No. 70/10 is correct, and therefore it was mentioned in that manner in the agreement of sale but recently on enquiry, it turned out that R.S.No. 70/10 does not relate to the plaint schedule property; and that he may be permitted to substitute R.S.No. 70/11 in the place of R.S.No. 70/10 in the plaint schedule.

7. This application was opposed by the petitioner denying the contention that at the instance of father-in-law of the petitioner, wrong survey number was mentioned in the agreement of sale. He further contended that when the agreement of sale mentioned R.S.No. 70/10, it is not permissible to amend plaint schedule as R.S.No. 70/11. He also pleaded that the very suit agreement of sale is a forged document.

8. By order dated 28.10.2014, the Court below allowed I.A.No. 657 of 2014. It held that boundaries would prevail over extents and survey numbers and that mere change in the survey number would not alter the nature of the suit and since the respondent had stated that he came to know recently regarding the correct survey number, the application for amendment was liable to be allowed.

9. Questioning the same, this Revision is filed.

10. Counsel for the petitioner contended that the agreement of sale mentioned the survey number R.S.No. 70/10 only and therefore, the plaint cannot be permitted to be amended by substituting R.S.No. 70/11 in place of R.S.No. 70/10. He also contended that the amendment is sought at the time when the matter was posted for arguments and therefore, the Court below

keeping in view the proviso to Order 6 Rule 17 CPC, ought not have allowed the amendment.

11. Counsel for the respondent/plaintiff on the other hand contended that in the written statement filed by the petitioner, no plea was raised that the survey number mentioned in the plaint schedule is wrong; no suggestion was given to the respondent in the witness box by the petitioner or his counsel that the survey number was wrongly mentioned in the plaint schedule; and only in the cross-examination of the petitioner, for the first time, the petitioner raised a plea that the survey number was incorrectly mentioned. For that reason, since the said fact came to light only during the course of examination of the petitioner, the application for amendment for correcting the survey number was filed. He contended that boundaries to the property as indicated in the plaint schedule are not sought to be amended and those boundaries will prevail over the survey number as well as the extent. He therefore, prayed that the Revision may be dismissed.

12. Order 6 Rule 17 CPC states:

"17. Amendment of pleadings:- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

13. From the above provision, it is clear that the Court can permit amendment of pleadings at any stage but after the trial has commenced, unless the Court comes to the conclusion that inspite of due diligence, the party could not have raised the matter in issue before the commencement of trial, the amendment cannot be allowed.

14. In the present case, no doubt the application for amendment of plaint was filed by the respondent after the trial commenced and at the stage of arguments. Counsel for the petitioner has not disputed the contention of the counsel for the respondent that in the written statement, the petitioner had not taken the plea that the survey number was wrongly mentioned in plaint schedule, that even in the cross-examination of respondent no suggestion was put by the petitioner's counsel that survey number was wrongly mentioned, and that only for the first time in the cross-examination of the petitioner, he raised this plea.

15. In this view of the matter, it has to be held that the respondent did not have any opportunity to raise the issue before commencement of trial inspite of due diligence, because no such plea was raised at an earlier point of time by the petitioner that survey number mentioned in the plaint is wrong. In this view of the matter, I am of the opinion that proviso to Order 6 Rule 17 CPC, is not a bar to respondent from seeking amendment of the plaint.

16. Counsel for the petitioner does not dispute the legal proposition that the boundaries prevail over extents as well as survey numbers. So, merely because survey number was incorrectly mentioned in the agreement of sale, since the boundaries would prevail, the respondent is entitled to seek amendment of plaint schedule. I am of the opinion that the

application for amendment was filed for bonafide reasons and the same had been rightly allowed by the Court below. Therefore, I do not find any merit in the Civil Revision Petition.

17. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

18. As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 15.06.2015

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