

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION No.4227 of 2011

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ORDER:

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This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.18-08-2011 in I.A.No.1441 of 2009 in O.S.No.813 of 2008 of the III Additional Junior Civil Judge, Nellore.

2. The petitioner herein is defendant in the above suit. The said suit was filed by respondents herein for a perpetual injunction restraining the petitioner from interfering with their alleged peaceful possession and enjoyment of the plaint schedule property. In the plaint schedule, two items were mentioned. Item No.1 of extent Ac.0.68 cents within the specific boundaries and item No.2 of extent Ac.1.00 cent within the specific boundaries. The plaint schedule mentions that these 2 items are located in Sy.No.2774/1 in Survepalli Bit-5 Pottempadu Panchayat area, Muthukur Mandal, Nellore District.

3. In the written statement filed by petitioner, it is the case of petitioner that the land in his occupation is located in Sy.No.2774/4 and the respondents/plaintiffs have no right in this land. It is further pleaded that the agreement

dt.12-07-1985 being relied upon by respondents is a forged one.

4. The respondents filed I.A.No.1441 of 2009 under Order VI Rule 17 CPC to amend the plaint schedule by substituting Sy.No.2774/4 in the place of Sy.No.2774/1 mentioned therein. It was contended therein that in settlement deeds executed by respondents' father in their favour, the survey number was wrongly mentioned as 2774/1 instead of 2774/4. It was also stated that subsequently registered rectification deeds were also executed by respondents' father on 06-08-2008 in their favour.

5. Counter affidavit was filed by petitioner opposing amendment of the plaint schedule. In the counter affidavit, it was contended that interim injunction was granted in respect of the property covered by Sy.No.2774/1 and the right of respondents is only in that survey number; the settlement deeds relied upon by them also mention the same survey number; and the respondents have no right or possession in respect of the property covered by Sy.No.2774/4. It was contended that the amendments prayed for by respondents would change the structure of the suit itself, and so it is not permissible.

6. By order dt.18-08-2011, the Court below allowed the said application and permitted substituting of Sy.No.2774/4 in the place of Sy.No.2774/1. It held that although in the settlement deeds relied upon by respondents marked as Exs.P-3 and P-4, the survey number is mentioned as 2774/1, in the agreement of sale under which respondents' father purchased the property which is marked as Ex.P-1 in I.A.No.879 of 2008, the survey number was mentioned as 2774/4 and not as 2774/1. It held that this document was already filed by respondents along with the suit; that there is no dispute with regard to either extent or boundaries; the rectification deeds filed by petitioners are dt.08-06-2008 prior to the filing of the suit on 27-08-2008 and since the identity of the property is not denied by petitioner, it cannot be said that the amendment sought by respondents will change the structure of the suit.

7. Questioning the same, this Revision is filed.

8. Learned counsel for petitioner contends that the Court below erred in allowing the application for amendment of plaint schedule by correcting the survey number mentioned therein and the Court below should have dismissed it; and the settlement deeds relied upon by respondents and the injunction order obtained pending

suit relate to Sy.No.2774/1 and not Sy.No.2774/4.

9. Learned counsel for respondents refuted the above submissions and supported the order passed by the Court below.

10. There is no dispute that the suit was filed by respondents/plaintiffs in respect of 2 items of property with specific boundaries mentioning that they exist in Sy.No.2774/1. According to respondents, although the settlement deeds being relied upon by them Exs.P-3 and P-4 mention the Sy.No.2774/1, in the agreement of sale Ex.P-1 under which their father purchased the property, the survey number was mentioned as Sy.No.2774/4 and not Sy.No.2774/1. According to respondents, even the settlement deeds had been corrected by execution of rectification deeds dt.08-06-2008. The suit was filed on 27-08-2008 and agreement of sale Ex.P-1 under which the father of respondents has purchased the property was marked as Ex.P-1 in I.A.No.879 of 2008 itself.

11. Having regard to these facts, and having regard to the fact that the boundaries would prevail over survey numbers and extent, since the subject property would primarily been identified on the basis of boundaries only, and since the respondents are not seeking any amendment to the boundaries, I am of the opinion that the

Court below was right in permitting the respondents to amend the plaint by correcting the survey number in the plaint schedule. I do not agree with the petitioner that the correction of survey number in the plaint schedule would change the structure of the suit.

12. I therefore do not find any merit in the Revision and it is accordingly dismissed. No costs.

13. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 15-06-2015
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