

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Civil Revision Petition No.2846 of 2012

Between:

Goduguluri Venkata Subbaiah

... Petitioner(s)

and

Goduguluri Subba Rao

... Respondent(s)

DATE OF JUDGMENT PRONOUNCED: **31st July, 2015.**

SUBMITTED FOR APPROVAL:

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

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| 1 | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

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

Civil Revision Petition No.2846 of 2012

ORDER:

This Civil Revision Petition is filed under Section 115

of Civil Procedure Code, 1908 challenging the order dt.16.04.2012 in I.A.No.2978 of 2007 in I.A.No.1217 of 2003 in O.S.No.333 of 2003 of the Principal Junior Civil Judge, Ongole.

2. Petitioner herein is the plaintiff in the said suit, which was filed for recovery of money against the respondent. The said suit was decreed on 16.04.2004 by the Principal Junior Civil Judge, Ongole.

3. Pending the suit, petitioner had filed I.A.No.132 of 2003 under Order 38 Rule 5 CPC to attach the property of the respondent. It is not disputed that the said Court on 28.05.2003 granted an order of attachment to the property of the respondent, which continued till disposal of the suit and that the said I.A. was subsequently renumbered as I.A.No.1217 of 2003.

4. After the suit was decreed, the decree was transferred to the Court of Junior Civil Judge, Yemmiganur, since the property attached pending the suit was located within the jurisdiction of the said Court. E.P.No.102 of 2005 was filed for sale of the attached property in the Court of Junior Civil Judge, Yemmiganur which was allowed and the said property was put to sale and a sale certificate dt.18.08.2004 was issued to the petitioner.

5. The petitioner however realized that the survey

number of the attached property was wrongly mentioned as survey No.1469 instead of survey No.307/A and 307/B in the schedule to the I.A.No.132 of 2003(IA.No.1217 of 2003) and also in the warrant of attachment, sale certificate and in other relevant records.

6. He therefore filed I.A.No.2978 of 2007 under Sections 152 and 151 of CPC praying the Principal Junior Civil Judge, Ongole to amend the survey number of the 1st item of the petition schedule property as survey No. “307/A and 307/B” instead of “1469” in the attachment schedule, warrant of attachment, sale certificate and other relevant records. He contended that there was a mistake in these documents and due to oversight, the No.1469 which is the Document number under which his vendor purchased the property, was wrongly mentioned as survey number; that there is no willful negligence on his part; and it is necessary to permit him to correct it.

7. Counter affidavit was filed by the respondent opposing this application and contending that Section 152 of CPC is not applicable. It was contended that boundaries shown in the EP schedule were incorrect. Further a contention was also raised that sale itself could not have been allowed to happen in view of certain irregularities in the payment of purchase money by the petitioner. It was also contended that since the attachment made was in respect of land in survey

No.1469, it cannot be made applicable to the property in survey Nos.307/A and 307/B.

8. By order dt.16.04.2012, the Court below dismissed the said application. It pointed out that the petitioner had not placed any material before the Court in support of his plea that his vendor got the property under document No.1469. It also held that it has no power to amend the survey number in attachment schedule, warrant and sale certificate and other relevant documents since the execution proceedings were conducted by the Junior Civil Judge, Yemmiganur.

9. Challenging the same, this Revision is filed.

10. Counsel for the petitioner contended that the certificate of encumbrance of the property filed along with the Revision clearly indicates that the subject land falls in survey No.307/A and 307/B and that the link document bears the No.1469 and that the said number was mentioned as survey number by oversight. He also contends that since the attachment pending the suit was made by the Junior Civil Judge, Ongole and that the attachment continued even after decree, even though the sale certificate was issued by the Junior Civil Judge, Yemmiganur and the execution proceedings were conducted there, it is the Principal Junior Civil Judge, Ongole who had to correct the schedule in I.A.No.1217 of

2003 since he had granted the attachment order pending suit and not the Junior Civil Judge, Yemmiganur.

11. Counsel for the respondent on the other hand refuted the said contentions and pointed out that the sale itself is illegal and that the respondent is now prepared to pay the entire decretal amount with interest and costs to satisfy the decree.

12. The main reason why the Court below has rejected the I.A.No.2978 of 2007 is that no material was placed before the said Court by the petitioner in support of his plea that the correct survey number of the attached property was 307/A and 307/B and that the document No.1469 under which the defendant's vendor has purchased the property, was wrongly shown as survey number.

13. However, since the petitioner has placed the certificate of encumbrance of the subject properties in support of his contention, I am of the opinion that the contention of the petitioner cannot be lightly brushed aside and the matter requires to be examined by the Court below by giving permission to the petitioner to file not only certified copy of link document bearing No.1469 of 1998 but also certificate of encumbrance in relation to the subject property.

14. Coming to the other ground mentioned in the impugned order that Principal Junior Civil Judge, Ongole has no power to amend the survey number and it is the Junior Civil Judge, Yemmiganur who has to do it, the order of attachment of the subject property pending suit was made by the Principal Junior Civil Judge, Ongole in I.A.No.132 of 2003 (renumbered as I.A.No.1217 of 2003) on 28.05.2003 and that order continued till disposal of the suit on 16.04.2004. Therefore, in respect of the correction in the schedule to the said I.A., it is only the Principal Junior Civil Judge, Ongole who can exercise power under Section 152 CPC and make the correction and not the Junior Civil Judge, Yemmiganur. Merely because the sale certificate and other execution proceedings were conducted by the Junior Civil Judge, Yemmiganur, the Principal Junior Civil Judge, Ongole cannot decline to exercise the jurisdiction to amend the schedule in I.A.No.1217 of 2003 if material is placed by the petitioner before the said Court in that regard. Therefore, this finding of the Court below is set aside.

15. Once this correction is made in the schedule to I.A.No.1217 of 2003 on being satisfied that the contention of the petitioner is correct, the other amendments in the warrant and sale certificate and other proceedings would be merely consequential and the petitioner can approach the Junior Civil Judge, Yemmiganur for those corrections,

if he succeeds in convincing the Principal Junior Civil Judge, Ongole that the amendment of the schedule in I.A.No.1217 of 2003 is warranted.

16. I also do not agree with the contention of the counsel for the respondent that the respondents now be permitted to pay the entire decretal amount to the petitioner. It is too late in the day for the respondent to make his offer since he had ample time after the decree was passed and before the EP was filed and even after the EP was filed for satisfaction of the decree but he did not do so.

17. In view of the above, I am of the opinion that the petitioner should be given an opportunity by the Principal Junior Civil Judge, Ongole to place all the material in support of his plea that instead of mentioning the correct survey number, the document number 1469 was erroneously indicated as survey number in the schedule to I.A.No.1217 of 2003.

18. Therefore, this Civil Revision Petition is allowed and the order dt.16.04.2012 in I.A.No.2978 of 2007 in I.A.No.1217 of 2003 in O.S.No.333 of 2003 of the Principal Junior Civil Judge, Ongole is set aside; I.A.No.2978 of 2007 is remitted back to the said Court for fresh consideration; both the petitioner and the respondent are given opportunity to place material before

the Court below in support of their respective pleas in regard to whether there is a necessity to amend the schedule in I.A.No.1217 of 2003 with regard to survey number; and this exercise shall be completed by the Court below within three (03) months from the date of receipt of a copy of this Order. There shall be no order as to costs.

19. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

31st July, 2015.

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