

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

CIVIL REVISION PETITION No.4405 of 2013

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.03-08-2013 in I.A.No.30 of 2010 in O.S.No.250 of 2007 of the VI Additional District Judge, Visakhapatnam.

2. The petitioners herein are plaintiffs in the said suit. They filed the said suit for a perpetual injunction restraining respondents from interfering with their alleged peaceful possession and enjoyment of the plaint schedule property. The plaint schedule property is an extent of Ac.4-96 cents covered by old S.No.3P and R.S.No.9/6P of Kapparada, Muralinagar in Visakhapatnam town with a building bearing D.No.39-5-38/2.
3. Petitioner Nos.1 to 5 and 7 to 14 and husband of 6th petitioner and others were originally partners of the firm M/s.Vommi Ramanamurthy & Sons along with some others. They retired from the said firm w.e.f. 27-12-1996 and the firm was reconstituted with the remaining partners. They contended that the 6th petitioner is the sole heir of Ramakrishnam Raju and succeeded to his estate. According to the petitioners, the said firm purchased the plaint schedule property in a Court auction sale under the sale certificate dt.07-03-1980 and also obtained possession thereof on 15-10-1980, and on the retirement of the petitioners from the firm, the plaint schedule property was allotted to their share. They alleged that respondents have no manner of

right whatsoever in any part of the plaint schedule property which is covered by R.S.No.9/6P of Kapparada.

4. Respondents filed written statement contending that they purchased land of extent of 1665 sq. yds. of land in Sy.No.9/5C abutting the plaint schedule property on the West. They contended that the plaint schedule is misleading and it does not reveal where the building bearing D.No.39-5-38/2 is situated. They alleged that the petitioners had shown the plaint schedule property by including the property of respondents which is located in Sy.No.9/5C of Kapparada village only with an intention to grab the property of respondents. They claim that their vendors are legal heirs of one N.Appalanarasamma.
5. In view of the stand taken by respondents, the petitioners filed I.A.No.30 of 2010 seeking amendment of the plaint in two respects i.e. to insert a paragraph to the effect that the said Appalanarasamma had sold of the entire property owned by her during her life time and her legal heirs therefore had no property belonging to the said Appalanarasamma to be sold to respondents. They also sought amendment of the plaint schedule describing the boundaries more explicitly.
6. Counter affidavit was filed by respondents opposing these prayers.
7. By order dt.03-08-2013, the Court below dismissed I.A.No.30 of 2010.
8. It held that only in the event the defendants pleaded set off, the plaintiff has an opportunity to file written statement under Order VIII Rule 6(3) C.P.C., but if the defendant makes a counter-claim,

the plaintiff can only file a written statement under Order VIII Rule 6A (3) C.P.C. but he has to right to file any such statement giving explanation for the pleadings taken by defendant in the written statement.

9. As far as the second amendment sought is concerned, it held that once the defendant filed a written statement stating that the boundaries shown in the plaint are incorrect and an issue was also framed to that effect, further amendment to the boundaries shown in the plaint schedule cannot be allowed as it would amount to taking away the valuable right accrued to respondents/defendants.
10. Challenging the same, this Revision is filed.
11. Heard Sri V.R.N. Prashanth, learned counsel for petitioners and Sri E.V.V.S.Ravi Kumar, learned counsel representing Sri V.L.N.G.K. Murthy, learned counsel for respondent Nos.2 to 4. Although notice was served on 1st respondent, there is no representation on his behalf.
12. Learned counsel for petitioners contended that the order passed by the Court below suffers from an error of jurisdiction and is unsustainable; that the view of the Court below that petitioners/plaintiffs are disabled from seeking amendment of the plaint because no set off or counter-claim is raised by respondents, is contrary to law; the Court below is also not correct in stating that the petitioners had no right to file any statement giving explanation for the pleadings taken by respondents in the written statement by way of amendment to the plaint; and that the amendment to boundaries of the plaint

schedule property sought by petitioners does not in any way take away any rights accrued to respondents and so the Court below ought to have allowed both the amendments sought for.

13. Learned counsel for respondent Nos.2 to 4 refuted the above contentions and supported the orders passed by the Court below.
14. Order VI Rule 17 C.P.C. enables the parties to a suit to amend the pleadings. The scope of Order VI Rule 17 C.P.C. is not controlled by Order VIII Rule 6 C.P.C. or Order VIII Rule 6A C.P.C. The Court below seems to be under misconception that unless a set off or counter claim is made by a defendant in a suit, a plaintiff cannot take additional pleading or amend an existing pleading in the plaint. Admittedly, the trial in the suit has not yet commenced. Therefore it cannot be said that respondents are put to any prejudice if the plaint is allowed to be amended. Therefore the finding of the Court below that petitioners are not entitled to seek amendment of the plaint in regard to the addition of a paragraph in the plaint, cannot be sustained.
15. Coming to the other amendment sought by petitioners with regard to boundaries of the plaint schedule property, a look at the pleadings of the petitioners suggests that the petitioners are giving more particulars to the property described in the plaint schedule. Merely because the respondents had raised a contention that the boundaries mentioned in the plaint are incorrect and an issue is framed, on that ground it cannot be said that they suffer any prejudice if the amendment to the plaint schedule as prayed for, is allowed. In this view of the matter, the impugned order cannot be sustained and it is accordingly set

aside.

16. The Civil Revision Petition is allowed and I.A.No.30 of 2010 in O.S.No.250 of 2007 on the file of the VI Additional District Judge, Visakhapatnam is also allowed. No costs.
17. As a sequel, miscellaneous petitions pending if any, in these Revisions shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 12-11-2015

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