

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.1179 of 2015

ORDER:

The petitioner herein is the plaintiff in O.S. No.624 of 2006 on the file of the learned Special Judge for S.C./S.T. (POA) Act, 1989—cum—VII Additional District & Sessions Judge, Rangareddy District at L.B.Nagar. The said suit was filed for specific performance of agreement of sale dated 06.11.1996. It appears that the said suit was decreed on 14.08.2012 directing the plaintiff to pay balance sale consideration, and it has paid the balance sale consideration of Rs.2,02,250/-, but the *ex parte* decree dated 14.08.2012 was set aside and the suit was restored on 14.08.2012. After two years of restoration, the plaintiff filed I.A.No.3326 of 2014, seeking permission of the Court to amend the plaint schedule by inserting the boundaries in the plaint, which obviously shows that the original plaint does not contain boundaries. The said application was resisted by the respondent-defendant stating that the proposed boundaries, sought to be inserted by the plaintiff, are neither described in the suit agreement of sale dated 06.11.1996 nor at any other point of time. It was further stated that an *ex parte* decree was obtained on 14.08.2012 by mentioning wrong address of the defendant and hence, the *ex parte* decree was set aside. Taking those facts into consideration, the trial Court dismissed the present application by order dated 31.12.2014.

When the present case is taken up for consideration, it was represented by the learned counsel for respondent-defendant that the suit itself was dismissed for default on 18.09.2015, but the learned counsel for petitioner-plaintiff submits that an application for restoration of the suit, along with a petition to condone the delay, is filed and it is pending for consideration.

However, with regard to the present Civil Revision Petition, which is filed challenging the order dated 31.12.2014 in I.A.No.3326 of 2014, learned counsel for the petitioner submits that though the agreement of sale does not contain boundaries, the vendor of petitioner got the property pursuant to a decree in O.S. No.164 of 1989 dated 01.12.1989 and Gift Settlement Deed dated 08.10.1990 and those documents contain boundaries of the property. He further submits that the same property is sought to be sold to the petitioner under the agreement of sale, but those facts could not be stated in the affidavit filed in support of I.A.No.3326 of 2014; in those circumstances only, the application was dismissed.

Since the main suit itself was dismissed for default and the application for restoration is pending and the submission of learned counsel for the petitioner that the boundaries, which are sought to be included, have a basis in the decree in O.S. No.164 of 1989 dated 01.12.1989 and Gift Settlement Deed dated 08.10.1990, this Court deems it appropriate to give an opportunity to the petitioner-plaintiff to file an additional affidavit in support of its application in I.A. No.3326 of 2014, for which an opportunity should be given to the respondent-defendant also. On consideration of the same, I.A. No.3326 of 2014 can be considered afresh in accordance with law. The said exercise can be done only in the event of restoration of O.S.No.624 of 2006.

In the circumstances, the order in I.A. No.3326 of 2014, dated 31.12.2014, is set aside, and the matter is remanded to the Court below for consideration afresh of the application, as stated above, in the event of restoration of O.S. No.624 of 2006.

Accordingly, this Civil Revision Petition is allowed. No order as to costs.

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

25.01.2016
MVA

A.RAMALINGESWARA RAO, J