

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1287 OF 2016

ORDER:

This revision is filed under Article 227 of the Constitution of India challenging the Order dated 14.12.2015 in I.A. No.846 of 2015 in O.S. No.347 of 2007 passed by the Principal Junior Civil Judge, Srikakulam, wherein the petition filed under Rule 17 of Order VI of the Code of Civil Procedure, 1908 (for short, 'CPC') read with Rule 28 of Civil Rules of Practice was dismissed on the ground that the petitioners did not seek amendment of the contents of the plaint except seeking amendment to Western boundary of the plaint schedule and that the trial court observed that if the amendment permitted, it will lead to confusion in the mind of the court in appreciation of the material on record with regard to boundaries of schedule property.

02. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

03. Learned counsel for the petitioners contended that the amendment would not change the nature of the suit and would not take valuable right, if any, accrued to the respondents and despite due diligence, the petitioners could not file the petition to amend the boundary in the plaint schedule. Therefore, it is necessary to amend the Western boundary mentioned in the plaint schedule, for better clarity and to avoid future complications in execution of decree.

04. As seen from the material on record, the plaintiff filed the suit for injunction restraining the respondents and their men from interfering with the peaceful possession and enjoyment of the suit schedule property and it is noticed that the Western boundary was not specifically mentioned, since the defendant possessed the other bits of

land.

05. No doubt the petitioners did not seek permission to amend the contents of the body of the plaint, but only seeking permission to amend the Western boundary of the plaint schedule property, to include the other bit into the schedule property. As seen from the schedule, it is an extent of Ac.2.92 cents in Sy.No.901/3P within the boundary specified therein, further the Western boundary was mentioned as defendants land instead of plaintiffs' property. Therefore, it is clear mistake and despite due diligence, the petitioners could not take steps to amend the plaint schedule, which is part and parcel of the plaint, in view of Rule 3 of Order VII of CPC where the petitioners are required to furnish the details with description of the property, sufficiently, to identify and in such case such property can be identified by boundaries or numbers. With regard to survey number, the plaintiff shall specify the boundaries or numbers.

06. In fact, the petitioners specified the boundaries in the schedule as required under Rule 3 of Order VII of CPC, but there is mistake, which would certainly lead to future complications in execution of decree, if any, passed in favour of the petitioners.

07. Therefore, I am satisfied that the petitioners are prevented by sufficient cause for taking steps to amend the Western boundary of the schedule. However, the delay that was caused by the petitioners in disposal of the suit can be compensated by granting costs by following the Judgment of the Apex Court reported in **REVAJEETU BUILDERS AND DEVELOPERS v. NARAYANASWAMY AND SONS AND OTHERS**^[1] and **RAMESHKUMAR AGARWAL v. RAJMALA EXPORTS PRIVATE LIMITED AND OTHERS**^[2].

08. The observation of the trial court is erroneous for the reason

that merely because body of the plaint is not amended, the Western boundary of the schedule cannot be amended which would lead to confusion in the mind of the Court is not a ground to reject the petition under Rule 17 of Order VI of CPC. It is for the Court to appreciate the evidence based on material after completion of trial and the confusion which expected to be created in the mind of the Court in appreciation of the evidence is not a ground to dismiss the petition.

09. Hence, I find that it is a fit case to permit the petitioners to amend the Western boundary as claimed in the petition on payment of costs of Rs.1,000/- (Rupees one thousand only) to the defendants/ respondents.

10. Accordingly, the revision is allowed, permitting the petitioners to amend the Western boundary as claimed in I.A. No.864 of 2015 in O.S. N.347 of 2007 on the file of Principal Junior Civil Judge, Srikakulam, on payment of costs of Rs.1,000/- (rupees one thousand only) to the defendants/ respondents within one month from today.

11. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 24.06.2016

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[\[1\]](#) 2009(8) SCJ401

[\[2\]](#) 2012(4) SCJ 724