

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.5146 of 2011

ORDER:

Heard both sides and perused the material on record including the impugned order of the lower Court and the material filed by the respondent/defendant which are P.W-1 evidence in the suit, sale certificate delivery warrant besides plaint and the written statement in the present suit.

2) The undisputed facts are that out of the schedule description correlates to the defendants entire extent of Ac.4-79 cents in S.No.1029/2006-1A. The defendant was judgment debtor as per decree in O.S. No.508 of 2003 and the plaintiff herein was the auction purchaser out of Ac.4-79 cents for Ac.2-24 cents. In the auction by publication vis-à-vis auction and confirmation knocking the bid through Court, vis-à-vis the sale certificate, pursuant to the recording of delivery and sale certificate execution in E.P. No.215 of 2006 for delivery to the auction purchaser and the recording of the delivery effected through Court Amin describes existing plaint schedule boundaries though stated for Ac.2-24 cents out of Ac.4-79 cents, for Ac.4-79 cents, even to say it is northern portion or southern portion or eastern portion or western portion out of the total extent, he purchased; none of these are clear. The suit for bare injunction is maintained by the plaintiff against the defendant from the above with reference to the record, claiming the boundaries for entire extents showing as if for Ac.2-24 cents. It is not described for the plaint before giving the schedule muchless in the schedule of Ac.2-24 cents is northern out of the total extent Ac.4-79 cents, but for saying what was the delivery taken is the northern Ac.2-24 cents out of the total extent in maintaining the suit for injunction and the amendment now sought for. Same was ended in dismissal saying from the cloud all through and trial already commenced not showing due diligence the petition deserves dismissal. What is the due diligence required herein is in shown wrong description of the southern boundary to be corrected and inadvertently it could not be noticed earlier and now notices from the P.W-1 cross-examination in seeking the amendment therefrom within no lapse of time though it is the contest of the defendant of written statement also taken the plea of plaint description is not correct and the delivery warrant and sale certificate are not

correct though not specifically stated not described in which portion out of the total extent the injunction suit claim made.

3) In the factual scenario the dismissal by the lower Court on the ground of lack of due diligence is unsustainable. However that will not clear the cloud for entitlement to the relief of injunction.

4) Having regard to the above, the petition is closed by giving liberty to the petitioner/plaintiff to file fresh petition for amendment if at all he could prove by taking the plea of what he taken delivery through Court Amin pursuant to the sale certificate is northern portion Ac.2-24 cents out of Ac.4-79 cents and in the alternative for partition by allotting in equity the northern portion within the entire survey number out of Ac.4-79 cents and to grant consequential injunction to that for deciding the same on other merits without insisting for due diligence from due diligence aspect is covered by virtue of this order.

5) Miscellaneous petitions, if any pending in these two appeals shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 03-02-2016

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