

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition Nos.5621 and 5854 of 2015

COMMON ORDER:

These two revision petitions under Article 227 of the Constitution of India by the unsuccessful petitioners-plaintiffs are directed against the orders dated 07.07.2015 separately passed by the learned Junior Civil Judge at Narsapur of Medak District, in IA.nos.77 and 78 of 2015 respectively filed under Order VI Rule 17 read with Section 151 of the Code of Civil Procedure, 1908, for amendment of the Interlocutory Application and the plaint insofar as the survey number of the plaint/ petition schedule property is concerned.

2. I have heard the submissions of *Sri G.L. Narasimha Rao*, learned counsel for the revision petitioners-plaintiffs and of *Sri P.V.L.Bhanu Prakash*, learned counsel for the respondent-defendant. I have perused the material record.

3. The facts which are necessary to be stated as a preface to this order, in brief, are as follows:

'The plaintiffs brought the suit against the defendant for a perpetual injunction in respect of land bearing plot no.101 admeasuring 200 square yards in Sy.No.294/ 3/ AA in Block No.4 situate at Venkatreddy Nagar, Bollaram Village, Jinnaram Mandal of Medak District, more fully described within the boundaries mentioned in the schedule annexed to the plaint. In the plaint, the plaintiffs, *inter alia*, claimed that they purchased the plaint schedule property under a registered sale deed dated 24.10.2002 and that their vendor purchased the said property under a registered sale deed dated 26.12.1994. The defendant filed a written statement resisting the suit, *inter alia*, contending that the plaintiffs' sale deed refers to Sy.No.284/ 3/ A whereas the suit is filed in respect of Sy.No.294/ 3/ AA and that therefore the plaintiffs are claiming the property with which they are not concerned and which they have not purchased under their sale deed and that the plaintiffs suppressed the real facts and that

the plaintiffs, under the guise of the injunction being claimed in the suit, intend to grab the land of the defendant admeasuring Ac.0-14.9 guntas in Sy.No.284/ 3 situate at Bollaram Village, which was purchased by the defendant under a sale deed dated 25.11.1995, from its original owners, T. Lakshminarasimha Reddy and T.Govind Reddy, through their GPA holder, P. Jayaprakash Reddy and that the defendant is in possession of the said land purchased by him from the date of the said purchase and that the suit is filed with a *mala fide* intention. During the pendency of the suit, the plaintiffs filed the subject two interlocutory applications; one for amendment of the Interlocutory Application, and the other for amendment of the plaint, insofar as the survey number alone of the schedule property. The defendant filed counters and resisted the applications. The trial Court, by the orders impugned in these revisions, dismissed both the applications. Therefore, the plaintiffs filed these two revision petitions.'

4. The learned counsel for the plaintiffs while reiterating the case of the plaintiffs, which is stated supra, would contend that the plaintiffs sought amendment of the survey number of the suit schedule land which, by typographical mistake, is wrongly mentioned as '294/ 3/ AA' instead of as '284/ 3/ A' and that the trial Court erroneously dismissed the petition observing that the plaintiffs are dragging on the matter. He would further submit that the plaintiffs are not changing the boundaries and other details of the property mentioned in the schedule but they are seeking amendment only with regard to survey number to keep it in agreement with the survey number, which is correctly mentioned in their sale deed, and that therefore the orders of the trial Court impugned in these revisions are unsustainable and are liable to be set aside.

5. Per contra, the learned counsel for the defendant in both the revisions while reiterating the case of the defendant, which is already stated supra, would contend that the plaintiffs' vendors' document mentions Survey

no.284/ 3 only and that the plaint is silent as to when the sub-division has taken place and that the plaintiffs under the guise of the present injunction suit intend to grab the land of the defendant as stated in his written statement; he thus supported the orders of the trial Court.

6. I have given detailed and thoughtful consideration to the facts and submissions. I have perused the material record. A perusal of the plaint and the documents filed with the plaint, the copies of which are produced during the hearing, would show that the plaintiffs filed the suit for perpetual injunction in respect of the property mentioned in the registered sale deed of the plaintiffs; but, in the plaint schedule and in the pleadings in the plaint and the Interlocutory Application, the survey number was mentioned as 294/ 3/ AA instead of as Sy.No.284/ 3/ A, which was mentioned in their said sale deed. Having noticed the said mistake, the plaintiffs are now seeking amendment of the survey number only by retaining the other details of the property including the boundaries as originally mentioned in the schedule of the plaint. Even the defendant in his written statement stated that the plaintiffs' document mentions Sy.no.284/ 3/ A whereas in the plaint schedule the survey number is mentioned as 294/ 3/ AA. Therefore, from the facts narrated, it is obvious that the mentioning of the wrong survey number in the plaint schedule as well as in the pleadings of the plaintiffs both in the plaint and the Interlocutory Application is a mistake and the said mistake can be permitted to be corrected, in the facts and circumstances of the case. The contentions of the defendant that the plaintiffs, under the guise of the present suit, are claiming the property of the defendant as mentioned in his written statement need not be gone into at this stage as the said aspect has to be decided by the trial Court after full-fledged trial. Further, as per settled law while considering an application for amendment, this Court need not adjudicate the merits of the proposed amendment.

7. Viewed thus, this Court finds that there is merit in the revisions and that the orders of the trial Court, which are not justified, are liable to be set aside. However, before parting, it is to be noted that the plaintiffs' request insofar as the amendment of the Interlocutory Application is concerned, can only be considered partly permitting to amend the petition and the schedule annexed to the said petition but not the affidavit as an affidavit, being a sworn statement, cannot be permitted to be amended; hence, the plaintiffs shall only be permitted to file an additional affidavit explaining the mistake in the affidavit filed in support of the interlocutory application.

8. In the result, both the Civil Revision Petitions are allowed and the orders impugned are set aside. As a sequel, IA.Nos.77 and 78 of 2015 in OS.no.57 of 2012 are allowed permitting the plaintiffs to amend the pleadings in the plaint, plaint schedule, petition in IA.no.198 of 2012 and the schedule annexed to the said petition insofar as the survey number is concerned by amending the Sy.No.294/ 3/ AA as 284/ 3/ A wherever it occurs; however, insofar as the relief of amendment of the affidavit in IA.no.198 of 2012, suffice if it is observed that the plaintiffs shall file an additional affidavit explaining the mistake in regard to the survey number instead of amending the affidavit filed in support of the said petition.

Miscellaneous petitions, if any, pending in these revisions shall stand closed. There shall be no order as to costs.

28.12.2016
Vjl

M. SEETHARAMA MURTI, J