

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO
Civil Revision Petition Nos.2958, 2987, 2997, 3541 and
3542 of 2014

Common Order:

All these Civil Revision Petitions are being disposed of by this common order, as they are inter-connected.

2. The petitioners herein are plaintiffs in OS Nos. 41 of 2012, 32 of 2011, 41 of 2012, 33 of 2011 and 40 of 2012 respectively. They entered into separate Memorandums of Understanding in respect of their suit schedule properties and the total extent covered by all the suits is Ac.9-00 in Survey No.345 of Jangareddigudem village and Mandal. The property was not sub-divided, but the Memorandums of Understanding were entered into in respect of different portions of land with specified boundaries. Based on the boundaries mentioned in the Memorandums of Understanding, the plaintiffs filed the respective suits for specific performance. Before commencement of trial, it was noticed by the plaintiffs that the boundaries mentioned by them in the suit schedule do not tally with the ground reality and, in those circumstances; they wanted amendment of the plaint schedule indicating the correct boundaries. Accordingly, they filed IA Nos.260 of 2014, 257 of 2014, 634 of 2014, 258 of 2014 and 259 of 2014 in OS Nos. 41 of 2012, 32 of 2011, 41 of 2012, 33 of 2011 and 40 of 2012 respectively. The said applications were resisted by filing respective counters stating that the applications were filed only to delay the proceedings and the suits were filed in accordance with the letters of understanding and there is no need to amend the plaint schedules. It is also stated that the amendment of the plaint schedules, at this stage, would introduce new cause of action. Ultimately, all the applications were dismissed, by a common order, dated 07.07.2014. Challenging which, the above Civil Revision Petitions are filed.

3. Learned counsel for the petitioners submits that, in view of the ground reality it has become necessary for them to amend the plaint schedules in order to have better clarity and to lead evidence on the basis of the correct boundaries.

4. Learned counsel for the respondents, on the other hand, submits that the Memorandums of Understanding were entered with specific areas and specified boundaries and the boundaries mentioned in the Memorandums of Understanding cannot be altered by filing the suits.

5. A portion of the order of the lower Court, dismissing the applications, reads as follows.

“The parties to such suit have to rely on the promise of contract and they cannot go beyond the terms and conditions of the agreement are the description of the property agreed to be sold there under. By executing a letter of understanding the parties entered into specific performance of contract for the sale of the property by one party and for the purchase of the party by another mentioned/the boundaries within which the property is situate. Here the petitioners contended that since there were wrong boundaries in the letters of understanding and those boundaries were simply carried to the plaint schedule. The pleadings of the respective suits are to the effect that only after mutual negotiations the contest were entered into on 10.1.2011 and it is not the case of the petitioners that any fraud was played against them while mentioning the incorrect boundaries in the letters of understanding such incorrect boundaries, according to the respective petitioners might have kept in even assuming for a movement that executants of letters of understanding mislead the petitioners herein while executing the letters of understanding by giving incorrect boundaries the remedies of the petitioner in my view are not for amendment of the boundaries in the respective plaint schedules altering the nature of the contract and there remedies may before seeking the refund of the sale consideration paid (which is sought for as alternative relief in the suit) or claiming

compensation for wrong description of the plaintiff schedules inducing them to enter into contract by the respective respondent/defendant etc., when the suit is for unforeseen of particular contract I feel that the amendment cannot be permitted to change the description of the property covered by the contract of sale.”

6. In view of the pleadings of the respective parties, what is to be seen is whether any prejudice is caused to the case of the defendants by seeking amendment of the plaints with correct description of the boundaries before commencement of trial or not?

7. The trial Court unnecessarily went into the facts of the case and dismissed the applications. By allowing the amendment of the boundaries mentioned in the schedules to the plaints, it does not mean that the suits itself were allowed. The parties wanted to make amendments to the plaint schedules before commencement of the trial. Whether the said suit schedules are in accordance with the Memorandums of Understanding or not is not the concern of the Court at this stage. The evidence has to be let in and the rights of the plaintiffs have to be decided. The right to get a decree is, still, to be decided on the basis of oral and documentary evidence. Therefore, this Court feels that at this stage no prejudice is caused to the defendants by virtue of the amendment sought for by the plaintiffs. If the respective defendants, still, think that the earlier written statements filed by them are not sufficient, they can file additional written statements disputing the case of the plaintiffs.

8. In the circumstances, all the Civil Revision Petitions are allowed and the impugned common orders, dated 07.07.2014, passed by the learned Additional District Judge, West Godavari, Kovvur, in IA Nos.260 of 2014, 257 of 2014, 634 of 2014, 258 of 2014 and 259 of 2014 in OS Nos. 41 of 2012, 32 of 2011, 41 of 2012, 33 of 2011 and 40 of 2012 respectively, are set aside. Consequently, IA Nos.260 of

2014, 257 of 2014, 634 of 2014, 258 of 2014 and 259 of 2014 in OS Nos. 41 of 2012, 32 of 2011, 41 of 2012, 33 of 2011 and 40 of 2012 respectively, are allowed. The respective respondents/defendants are at liberty to file additional written statements within a period of one month from the date of receipt of a copy of this order, if they so choose. If there is any need for re-casting the issues, the lower Court can re-caste the issues also before commencement of trial in the respective suits. The CRPs are accordingly allowed. However, in the circumstances, no costs.

9. As a sequel thereto, the miscellaneous petitions, if any, pending in these Civil Revision Petitions, shall stand closed.

A.

RAMALINGESWARA RAO, J.

Date: 25.01.2016

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