

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1283 of 2016

ORDER:

The revision petitioners are the J.Drs.2, 3, 5 and 6 among the 6 defendants/J.Drs. and unsuccessful applicants in E.A.No.27 of 2014 covered by the impugned order dated 29.12.2015 of the I Additional Junior Civil Judge, Nellore, in E.P.No.124 of 2003 filed by the 3 plaintiffs pursuant to the judgment and decree dated 10.08.1992 declaring title of the plaintiffs/revision respondents by granting relief of possession in O.S.No.464 of 1985 viz., Ac.0-48 cents out of Ac.1-92 cents dry on northern side in Patta No.2 in survey No.751 of Nellore Bit-II Village, bounded by East: Paniki Daweed's land; North: Peters land; South: Gurrapu Laxmaiah land and West: donka and dawees land. The application in E.A.No.27 of 2014 filed by them was under Section 151 CPC to direct the Court Amin to deliver the property to the decree holders in accordance with the orders passed by the executing Court earlier on 20.06.2012 (in E.A.No.597 of 2009) taking into consideration of the boundaries.

2. Coming to the grounds of revision and the scope of revision lis, it is essential to state the factual background of the lis. O.S.No.464 of 1985 referred supra was maintained originally by sole plaintiff by name Rayapu Polaiah @ Pondaiah and who since died pending suit, plaintiff Nos.2 and 3 i.e., Rayapu Chinnaiah (his son) and Thepalapuddi Narayanamma (his married daughter and wife of one Gunnaiah) were added as legal representatives of 1st plaintiff vide orders in I.A.No.981 of 1990 dated 17.10.1990. The suit filed was against 6 defendants originally by name

Gurrapu Masthanu S/o. Polaiah and his two sons and wife i.e., Gurrapu Panchalaiah, Gurrapu Narayana and Mariamma and one Meduri Ranga Rao and Kamatam Danam. It is during pendency of the suit, Rayapu Chennaiah S/o. Polaiah @ Pondaiah, was impleaded as per orders in I.A.No.1379 of 1991 dated 21.02.1992. It is necessary to mention to be clarified further no doubt, the name of the 2nd plaintiff and 7th defendant including fathers name are correlating as a same person. The suit relief was for declaration of the plaintiffs are absolute owners of the plaint schedule property of Ac.0-48 cents out of Ac.1-92 cents within the boundaries in S.No.751 described supra and for recovery of possession after evicting the defendants and for future mesne profits. The suit was in fact filed for the relief of permanent injunction and the same was later converted into declaration of title and possession supra in the year 1990.

3. According to the plaint averments, the 1st plaintiff being owner has been in possession and enjoyment of the suit land (plaint schedule property) for more than 20 years, which is ancestral land and succeeded by him after his father's death 20 years back and plaintiff while in possession was raising dry crops like ragi and his neighbouring lands also dry lands were converting into wet lands, the 1st plaintiff started preparation to convert into wet land and raised fencing to the Ac.0-48 cents to the plaint schedule on 4 sides and also stocked hay ricks therein. The land of the 1st defendant is to the south of the suit land and the 1st defendant with ulterior motive started threatening to enter into suit land with the support of his henchmen including defendant Nos.2 to 6 without any manner of right and unlawfully trespassed

into the suit land after filing of the suit by coming into unlawful possession and thereby they are liable to be evicted and the title of the plaintiffs over the suit property is to be declared and they are also made liable for the mesne profits.

4. The written statement of the defendants was in opposing the suit claim filed originally for bare injunction on 16.01.1986 and after the suit filed by the plaintiffs supra was amended from relief of injunction to the relief of declaration and possession, the additional written statement dated 08.02.1991 was filed and also the written statement was amended pursuant to the orders in I.A.No.128 of 1991 dated 12.11.1991. In contest of the defendants from the written statements and amended written statement as referred supra, in nutshell while disputing the maintainability of the suit and denying the plaint averments is that plaintiff got neither right nor possession and the suit land is saline and sand dibba and lying as waste land and no crops were raised for there is not even water facility till date of suit. It is averred that the 1st defendant purchased the land in patta No.2 in S.No.751 under a registered sale deed dated 10.09.1981 from its owners and came into exclusive possession and enjoyment with right and title which is in an extent of about Ac.1-92 cents. The 1st plaintiff got only Ac.0-12 cents as per registered settlement deed dated 09.06.1953 executed by one Rayapu Chennaiah and even 1st plaintiff tried to purchase the land purchased by the 1st defendant supra but could not and therefrom bore grudge against him and his family members and filed the suit with false allegations as if he is in possession and enjoyment though it is the 1st defendant who is exclusive possession and enjoyment with right

and even the plaint schedule was described including the boundaries wrongly and the alleged trespass into the plaintiffs possession by the defendants is nothing but false and plaintiff has no right or title nor in possession and the defendants are not liable to deliver possession or to account for any profits and in fact defendant Nos.2 to 6 supra are not necessary parties for they have nothing to do with the suit property and the other son of late Rayapu Polaiah @ Pondaiah was not impleaded though he sold away his share of property succeeded from his father the 1st plaintiff and the suit is not maintainable thereby, for non impleadment of necessary party.

5. The written statement filed by the 7th defendant after his impleadment was with averments supporting the plaintiffs suit claim saying plaint averments are true and the defence supra is not correct and plaintiffs 2 and 3 and the 7th defendant are entitled to suit land and defendant Nos.1 to 6 supra have no right whatsoever and defendant Nos.1 to 6 supra are liable to deliver possession of the suit land.

6. From said pleadings including the amendment pleadings supra, after formulating the issues as to entitlement of relief of declaration of title of plaintiffs as owners and recovery of possession and profits, in the course of trial the 2nd plaintiff Rayapu Chinnaiah was examined as PW.1 and 2 more witnesses i.e., Paniki Daweed, plaint schedule described southern boundary holder and part of western boundary holder, was examined as PW.2 and one Kylasa Samuel as PW.3 and placed reliance upon Ex.A1-registered settlement deed dated 09.06.1953 executed by

Rayapu Chennaih in favour of 1st plaintiff-Polaiah @ Pondaiah, Ex.A2-rytu passbook obtained by 1st plaintiff supra and Ex.A3-cist receipt. On behalf of defendants, 1st defendant was examined as DW.1 and cause examined 3 more witnesses i.e., Pernati Polaiah, Rayapu Joshi and Varikunta Ragavaiah as DWs.2 to 4 and marked Ex.B1-registration extract of the sale deed dated 10.09.1981.

7(a). From said evidence, the trial Court held particularly in relation to the identity of the plaint schedule property, which is the present subject matter of the lis leading to the complications in execution, that both parties from the pleadings and evidence in support of it with rival claims claiming title over the plaint schedule property and it is the case of the 1st defendant of 1st plaintiff got only Ac.0-12 cents as per settlement deed dated 09.06.1953-Ex.A1. Admittedly the total extent of land in S.No.751 (patta No.2) is Ac.1-92 cents and out of said extent, the plaintiffs and the 7th defendant are claiming as owners of Ac.0-48 cents within the boundaries described in the plaint (supra). From the evidence brought on record, the 1st plaintiff's late father was Rayapu Peda Polaiah, whose brothers are China Polaiah, Pedda Chennaiah and Rayapu Chinnaiah. Ex.A1 settlement deed dated 09.06.1953 shows Rayapu Chinnaiah had Ac.0-24 cents and he settled thereunder Ac.0-12 cents in favour of the 1st plaintiff and his father. The father of the 1st plaintiff and his brothers supra had a total extent of Ac.0-92 cents in S.No.751 out of Ac.1-92 cents supra and out of their Ac.0-92 cents, Rayapu Pedda Chennaiah had Ac.0-24 cents even from the recitals of Ex.A1. It clearly demonstrates that said Rayapu family got some land in survey No.751 and from said settlement deed, even 1st defendant

say the 1st plaintiff got Ac.0-12 cents in S.No.751. From that say of 1st plaintiff got Ac.0-12 cents in S.No.751, to that extent not in dispute, but for any additional extent above the same. The case of the plaintiffs with reference to Ex.A1 and the suit claim and from Ex.A2-Rytu passbook is that besides the original extent of Ac.0-24 cents under Ex.A1 settlement, the 1st plaintiff got Ac.0-12 cents total thereby is Ac.0-36 cents in S.No.751 and the same includes the property in an extent of Ac.0-24 cents of Rayapu Chinnaiah to say the other 12 cents out of 24 cents referred in Ex.A1 also succeeded by 1st plaintiff in his claiming for said 48 cents in S.No.751. Recitals in Ex.A1 also show, Rayapu family had Ac.0-92 cents in S.No.751 and the 1st defendant-DW.1 admitted in his evidence that Rayapu Chennaiah had 24 cents in S.No.751. He deposed that he does not know how his vendors got land to sold him under Ex.B1 sale deed dated 10.09.1981. DW.1 further admitted that the vendors did not show any document of title for execution of Ex.B1 sale deed. The evidence of the 2nd plaintiff-PW.1 coupled with that of 1st defendant-DW.1 show that the 1st plaintiff got 24 cents in S.No.751 and his other senior paternal uncle got 24 cents as per Ex.A1 and 24 cents devolved upon 1st plaintiff by his father though it is not explained how the 1st plaintiff got other 12 cents to comprise 48 cents. No doubt Ex.A2-Rytu passbook also shows plaintiffs are owners of 48 cents in S.No.751. Which is in dispute by the defendants with suggestion of same is brought into existence for the suit purpose. PW.2-Paniki Daweed, adjacent owner of the suit land deposed that the 1st plaintiff and other plaintiffs are in possession and enjoyment of the suit land. PW.3-K. Samuel also spoke of

plaintiffs' possession and enjoyment of Ac.0-48 cents and DW.1 admitted that his vendors were not in possession of the land sold under Ex.B1. Thus, said evidence on record establishes that plaintiffs were in possession and enjoyment of the entire 48 cents claimed in the suit till they were dispossessed by the defendants. What 1st defendant purchased under Ex.B1 in the year 1981 of the land of Ac.1-92 cents is from 5 persons including Rayapu Chennaiah. Except Ex.B1, there is no other evidence to show how said vendor got entire extent in S.No.751. Even according to DW.1, Gurrapu Family had half share out of S.No.751 and Rayapu Pedda Chennaiah had 30 cents, another 30 cents belong to Peneti Narsaiah and 15 cents belong to Eduru Narasaiah and another 15 cents belong to plaintiff. Much prior to Ex.B1, Rayapu Chennaiah settled 12 cents out of his 24 cents in that survey number in the year 1953. Therefore Rayapu Chennaiah got title in remaining 12 cents who is also one of the executants of Ex.B1 to say the 1st defendant became owner of 12 cents and the 1st defendant-DW.1 even does not know the extent of each share in S.No.751 from his evidence to say he failed to establish that he purchased share of plaintiffs also in S.No.751. It can be said, said contest of 1st defendant as owner of entire land in S.No.751 is not correct for mere execution of sale deeds by persons with no title that will not bind the plaintiffs. In view of Ex.A2-Rytu passbook and there is presumption of right as per Section 6-A of the Act 1971 for no contra evidence to disprove the same and the 1st defendant could not substantiate by relying upon Ex.B1 as to how he got the land from his vendors to claim entire extent, held suffice to say plaintiffs established as owners of 48 cents and placed reliance on the

expression of the Apex Court in **Ramji Dayawala & Sons (P) Ltd. Vs. Invest Inport**¹, that where both parties let in evidence, burden of proof would assume no significance.

7(b). Coming to the contest of defendants of boundaries given in plaint schedule were not correct and evidence of plaintiffs speak boundaries for entire extent of land in S.No.751 and in the absence of proper description of boundaries of suit property, plaintiffs are not entitled to seek the relief of declaration concerned and the contest of the evidence of PWs.1 and 3 in variance and boundary description when compared to plaint schedule description, the plaint itself clearly speaks the boundaries of the 48 cents out of the full extent as described and the written statement of 1st defendant except stating plaint schedule is not correct has not chosen to say the boundaries of suit land specifically. Even 1st defendant admits in the written statement that land of Rayapu Chennaiah is on South of land purchased by him under Ex.B1, the evidence of PW.1 including from his cross examination is consistent to the plaint schedule description and PW.2-Paniki Daweed western boundary holder also deposed that on west of suit land there is donka and on further west he owns 2 acres of land and on all three sides of suit land he owns land. Even evidence of PW.3 regarding boundaries apart from that of PW.2 supra tally with plaint schedule boundaries. PW.3 deposed that on east, there is vutakaruva to some extent and said non mention in the plaint schedule by itself is not fatal to the case of the plaintiffs, as on east of suit land, PW.2 (paniki daweed) got some extent that also tallies with eastern boundary description

¹ AIR 1981 SC 2085

and thereby no discrepancies from evidence of PWs.1 and 3 to the plaint schedule. Thus, the evidence on record concludes that the plaintiffs established their title over the plaint schedule property for holding that plaintiffs are the absolute owners of the plaint schedule property and the defendant Nos.1 to 6 are in possession of the same illegally and thereby, the plaintiffs and the 7th defendant are entitled to recover possession from defendants 1 to 6 and the amendment of plaint for declaring possession relates back to the date of suit and for the defendants 1 to 6 failed to establish better title to that of plaintiffs, they are liable to be evicted from the suit property and plaintiffs are entitled to file a separate application for determination of profits from date of dispossession after filing of the suit till date of delivery of possession.

8(a). When the defendants impugned the legality and correctness of said decree and judgment of the trial Court, the lower appellate Court in A.S.No.80 of 1992 vide judgment dated 13.07.1998 by reappreciation of evidence afresh on entire facts with reference to law held that from the rival contentions of both parties and the evidence let in by both parties since burden of proof lost its importance in the case on hand. The point formulated to decide in the appeal is which party is owner of the schedule property instead to decide whether the plaintiffs established their title to suit land. The 2nd plaintiff-Rayapu Chinnaiah is the son of 1st plaintiff and Ex.A1 settlement deed is shown executed in favour of 1st plaintiff by his senior paternal uncle Rayapu Chennaiah for 12 cents. From tenor of evidence on record, it is evident that plaintiffs suit claim is not basing on that Ex.A1 alone. Even as per the contest of the defendants/appellants

under Ex.A1, the senior paternal uncle of 1st plaintiff conferred on him only 12 cents in S.No.751. Coming to the contention of 1st plaintiff failed to establish title for remaining 36 cents to claim in the plaint schedule as 48 cents concerned from the pleadings in the plaint with the evidence of PW.1, suit property of 48 cents is part of the ancestral property and he also succeeded the same after the death of his father though no explanation provided about manner of flow of title to plaintiffs family and therefore, plaintiffs establish their title for entire 48 cents shown in the plaint schedule. Plaintiffs stacked their claim also in Ex.A2-Rytu passbook leave about Ex.A3-cist receipt and the passbook standing in favour of 1st plaintiff is for the plaint schedule of 48 cents in S.No.751 noted as ancestral property. Exs.A2 and A3 were issued in 1981 much prior to the filing of the suit and Ex.A3 cist receipt reflects payment of cist for faslies 1396 to 1399 and entries in Ex.A2 rytu passbook issued by the MRO, responsible revenue officer under the Statute of Record of Rights in the Land Act, 1971. The correctness of entries therein can be presumed as per Section 6-A of the Act unless contrary is proved and the defendant could not show but for simply saying those are fabricated, how to discard Ex.A2. PWs.2 and 3 boundary owners of plaint schedule also deposed in establishing title of 1st plaintiff over the plaint schedule land. Thereby there is a prima facie title in favour of plaintiffs and it is for the defendants to show they got any better title than that of plaintiffs to disentitle the plaintiffs from suit claim by defendants. Defendants evidence in this regard concerned, 1st defendant-DW1 claimed title under Ex.B1, dated 10.09.1981 as purchased the entire Ac.1-92 cents of S.No.751. It

is for the defendants to prove said sale deed and suit claim is part of the sale deed property. However, they could not succeed. Defendants could not explain any source of title of the vendors under Ex.B1 sale deed to convey entire Ac.1-92 cents in that S.No.751. DW.2 one of the vendors of Ex.B1 cause examined, he however admits in his cross examination that he does not know the extent of his share and shares of other vendors under Ex.B1 and he does not know how the other vendors acquired share in the land covered by Ex.B1. There is nothing establishing the vendors of Ex.B1 sale deed got Ac.1-92 cents to exhibit the sale deed. The 1st defendant even failed to establish, said 48 cents of plaintiff schedule is part of Ac.1-92 cents of land under Ex.B1, for defendants did not adduce any evidence on that aspect and evidence of DWs.1 and 2 show, Ex.B1 comprise suit land also.

8(b). No doubt, plaintiff in suit for declaration must establish his title without depending upon weakness of defendants. Then from above discussion, plaintiffs independently established their title. The defendants alleged that plaintiff schedule mentioned boundaries are not correct. They did not even mention what are the correct boundaries for the entire land. PW.1 in his cross examination repeatedly stated of correctness of the plaintiff schedule boundaries for the plaintiff schedule 48 cents and thereby it cannot be said boundaries are not correct. Even coming to the contention of suit claim is barred by time, the 1st defendant's sale deed Ex.B1 was in the year 1981. If at all the 1st defendant came into possession therefrom, when suit filed is of the year, 1985 and the amendment sought later to date of suit, was of the year 1990, to say well within 12 years from date of Ex.B1 so called purchase by

1st defendant and thereby the decree and judgment of the lower Court on all aspects is correct and sustainable.

8(c). Coming to the contention of, the plaintiffs ought to have sought for partition, because of total extent owned by different persons from the family of plaintiffs are only one of the owners therein and not for entirety, said contention is also not acceptable for no joint ownership, though the plaint schedule property is ancestral property of plaintiff from suit claim.

9. From the trial court's decree and judgment since confirmed in appeal and thereby merged with the appeal court's decree and judgment, it clearly substantiates that 1st plaintiff got 48 cents out of entire extent of Ac.1-92 cents in patta No.2 in S.No.751. Ex.B1 document on its face as if purchased entire Ac.1-92 cents, from the so called vendors by 1st defendant is incorrect. Even coming to plaint schedule boundaries as referred supra, the evidence of PW.2-paniki daweed, the plaint schedule eastern and western boundary holder, for the western boundary describes him for part of boundary besides there is donka. What PW.2 deposed is on western boundary, there is donka and beyond donka he got the land. There is no any irreconcilable mis-description, as there is donka and land of PW.2 daweed to the west of the plaint schedule 48 cents out of total extent of Ac.1-92 cents in S.No.751. So far as eastern boundary from the evidence supra what PW.3 deposed of there is vutakaruva to the east plaint schedule. Even taken the same, it is reconcilable as held by the trial Court and confirmed by the first appellate Court from trial Court's judgment at Para 24 of there are vutakaruva and land of

daweed to the east of the plaint schedule. Once the eastern and western boundary show vutakaruva and land of daweed on east and donka and land of daweed on west of the plaint schedule, to that extent the boundaries description is very clear. So far as northern boundary-peters land and southern boundary-gurrapu laxmaiah land concerned, the plaint averments with plaint schedule correlates the existence of northern side 48 cents of total extent of Ac.1-92 cents to say the defendants land is to the south of the plaint schedule land of 48 cents which is northern most out of the total extent of Ac.1-92 cents.

10. Once same is crystal clear from the judgment of the trial Court and first appellate Court as referred supra, coming to the execution of said decree of title declared for it, in seeking delivery of possession from the defendants pursuant to the decree and judgment of the trial Court confirmed by the first appellate Court as referred supra, the concept of boundaries prevail over survey number and extent from any confusion does not arise herein, as boundaries are clear, but for any wrong description to southern boundary at best, extent is clear and survey number is clear and the evidence is also clear including findings of the trial Court and first appellate Court of the plaint schedule is the northern most Ac.0-48 cents out of the full extent of Ac.1-92 cents in S.No.751 to say what is the claim of the defendants if not among any others including under Ex.B1 is only for the remaining land towards South what is beyond the northern 48 cents of plaintiffs in the S.No.751 out of Ac.1.92 cents.

11. In this background, the decree schedule ought to have been clarified, no doubt, by the trial Court and at least by first appellate Court rather reproducing the plaint schedule east and west boundaries in clarifying as eastern vutakaruva also besides land of paniki daweed and western side donka and land of daweed and southern side land of 1st defendant claim under Ex.B1. Had it been described in the trial Court's decree schedule, that could have been the end of the matter from its confirmation by the first appellate Court though there is such conclusion and finding given by the trial Court and by the first appellate Court. Thus the cloud if any in execution is from such non-clarification in the decree schedule and the plaintiffs at least should have been sought for amending the decree schedule by asking the trial Court pursuant to the observation in the judgment from the evidence on record to that extent rather than reproducing what is described in the plaint schedule as the judgment is very clear in clarifying from what is described in the plaint schedule by observing so. Further with reference to the evidence of PWs.1 to 3 and so far as the extent plaintiff entitled to Ac.0-48 cents concerned, trial Court came to right conclusion in saying 1st plaintiff's father out of the 4 brothers for each having 24 cents, besides 1st plaintiff succeeded from his father 24 cents and from another paternal uncle Chennaiah 24 cents which include if not even what is covered by his 24 cents of which 12 cents conveyed under Ex.A1 settlement. Once that was made final of the lis, it is not even left reopen to the defendants to re-agitate including, against the boundary description clarification in the trial Court's judgment, that was confirmed by the first appellate Court's judgment, un-agitated further and made final.

No doubt executing Court cannot go beyond the decree. Here the clarification regarding the eastern boundary mention as which include vutakaruva and paniki daweed and the western boundary as donka and paniki daweed is beyond donka, and on southern boundary-the land claiming under Ex.B1 by 1st defendant is not something going beyond the decree, but for what is the conclusion arrived in the judgment in granting the decree by the trial Court, confirmed by the lower appellate Court.

12. In **Jai Jai Ram Manohar Lal Vs. National Building Material Supply, Gurgaon**², the Apex Court referring to the earlier expression in **Purushottam Umedbhai & Co vs M/S. Manilal And Sons**³ held in permitting amendment of plaint within the discretion of Court saying on technical grounds such amendment where necessary shall not be refused for the facts involve mention of name of wrong person, instead of real plaintiff; then question of limitation does not arise as it has to be treated as originally instituted in the name of the real plaintiff, though his name is later amended. Particularly from Paras 5 & 6 it is observed that, rules of procedure are intended to be handmaid to the administration of justice. A party cannot be refused relief merely because of same mistake, negligence, inadvertence or even infraction of the rules of procedure. The Court always gives leave to amend the pleading of a party, unless it is satisfied that the party applying was acting malafide, or that by his blunder, he had caused injury to his opponent which cannot be compensated for by an order of costs. However negligent or careless may have been

² AIR 1969 SC 1267

³ AIR 1961 SC 325=1 SCR 982

the first motion and however late the proposed amendment, the amendment may be allowed, if it can be made without injustice to other side. Any mis-description even amendment can be allowed under Section 153 CPC and need not always be under Order VI Rule 17 CPC. The well settled rule is that all amendments should be permitted as may be necessary for the purpose of determining the real question in controversy between the parties, unless by permitting the amendment injustice may result to the other side. The power to grant amendment of pleadings is intended to serve the ends of justice and is not governed by narrow or technical limitation. There was in fact an observation of Court without even application for amendment has power to grant leave to rectify any mis-description or bonafide mistake.

13. In fact, the schedule description, survey numbers or boundaries, if outcome of bonafide mistakes can be allowed, if not come under Sections 152 or 153 C.P.C atleast under Section 151 C.P.C to subserve the ends of justice. In this regard, it was laid down way back in the expression of this Court in **Kalkonda Pandu Rangaiah V. Kalkonda Krishnaih**⁴ as follows:

“As a result of the above discussion my conclusions on the three points formulated above are as follows:- Where clerical or arithmetical mistakes occur in copying the plaint schedules from the documents anterior to the suit the proceedings in the suit can always be corrected under Section 152 C.P.C. In such cases even the documents on the basis of which the suit was filed may be amended either in a suit under Section 31 of the Specific Relief Act or in a proper case even by an application under Section 152 C.P.C provided it is a case of mis-description and not one of disputed identity. In such cases, if Section 152 is invoked it would obviate a suit which would ultimately bring the same result. **In all cases, where clerical or arithmetical errors creep-in in the plaint and as a**

⁴ 1973(2)Andh. W. R. 253

consequence in the decrees as well, they can be rectified at any time even after a final decree. A case of such an amendment petition under Section 152 C.P.C. filed in a pending suit even after a preliminary decree is passed therein is an a fortiori case”.

14. These expressions among the other were quoted with approval by this Court on dated 17.10.2016 in common order covered by C.R.P.Nos.1751, 1752 & 1753 of 2016 between **Mareddy Seetharatnam Vs. Sirivuri Venkatarama Raju and others.**

15. In **Banda Pulla Reddy vs Banda Lakshamma & others** on 06-03-2014 in A.S.No.47 of 1998 it was held as follows:

“As per the order VII Rule 3 where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and in case as the property can be identified by boundaries or numbers only as per record as settlement or survey, the plaint shall specify such boundaries or numbers. Thus it is to be seen as per the provision, if the description of the property is sufficient to identify; given either by boundaries or by numbers, it is suffice. The Apex Court in **Sheodhyan Singh Vs.MCT. Sanchara Kour**⁵ held that in case identity of property was established, even the mistaken mention of plot number if any only be regarded as mis-description which does not effect the identity. **Thus identity is the criteria rather than manner in which it was described.”**

16. From the above as the executing Court was the trial Court, the trial Court should have been exercised the power to amend the decree from what is clarified in the judgment of the plaint schedule boundary description on east and south and in saying the plaint schedule is the northern most 48 cents of the total extent of Ac.1-92 cents in S.No.751, and it is to the south of it

⁵ AIR 1963 SC 1879

what is remained in the survey number, for the 1st defendant if at all to claim under Ex.B1. From that there can be no ambiguity for execution which was not done. It is in that factual scenario, once there is a clear identity of the property shown in the plaint schedule clarified in the judgment, but for not described in the decree schedule of the trial Court, though said judgment is confirmed in the appeal that was made final, hence to clarify if at all from any application for amendment of the decree pursuant to the judgment observation in describing the southern and eastern boundaries and in showing plaint schedule as northern most out of Ac.1-92 cents for the said 48 cents to execute.

17. In the background, originally from the trial Court's judgment dated 10.08.1982 confirmed by the appellate Court's judgment dated 13.07.1998, E.P.No.452 of 2000 was filed by the decree holder and there was E.A.No.374 of 2010 filed therein. Leave it as it is, subsequent filing of the execution petition for recovery of possession within 12 years limitation period of trial Court's decree merged with appellate Court's judgment is not a bar and decree to count from appellate Court decree and judgment supra dated 13.07.1998, within 12 years therefrom on 13.07.2010. Thus said subsequent EP filed by the decree holders for recovery of possession is in E.P.No.124 of 2003.

18. It is while said execution petition in E.P.No.124 of 2003 pending for the relief sought is to issue Rule 22 notice and then Rule 35 delivery warrant to cause deliver vacant possession of the schedule property (decree schedule) from the judgment debtors 1 to 3, 5 and 6 to the decree holders who are plaintiffs and 7th

defendant. In the course of Rule 22 enquiry, E.A.No.504 of 2003 filed by the judgment debtors 2, 3, 5 and 6 who are the revision petitioners herein under Section 47 CPC on 10.09.2003, to determine specific measurements and boundaries of Ac.0-48 cents of the decree holders/respondents out of the total extent of Ac.1-92 cents. The order therein in E.A.No.504 of 2003 dated 30.08.2004 after trial Court decree confirmed by the appellate Court by A.S.No.80 of 1982 decreeing plaintiffs suit declaring title and recovery of possession from defendants 1 to 6 of the 48 cents out of Ac.1-92 cents in R.S.No.751, for the boundaries entire extent of Ac.1-92 cents which are not correct in the earlier execution petition E.P.No.452 of 2000 in E.A.No.374 of 2001 was filed to direct both parties to file these memos showing the convenient boundaries by the judgment, decree holders filed before the executing Court suppressing the facts again filed the present execution petition No.124 of 2003 and hence the E.A.No.504 of 2003 to be allowed. It was opposed by the decree holder in their counter saying, the objection raised by the J.Drs. were earlier already overruled by the trial Court and the appellate Court and such objection cannot be taken in execution stage and there are no merits and the E.A.No.504 of 2003 is liable to be dismissed.

19. The Court observed after recording the evidence of PWs.1 and 2 i.e., J.Dr.No.2 Gurapu Penchalaiah and J.Dr.No.3-Gurapu Narayana and of the 2nd plaintiff, 1st decree holder-Rayapu Chinnaiah as DW.1 from oral evidence observed that describing the plaint schedule of the suit as mentioned and the suit was decreed and the appellate Court confirmed dismissing the application and later the decree holders filed E.P.No.452 of 2000

for delivery of possession of the decree schedule property and in the execution petition earlier filed in the E.P.No.452 of 2000 supra sought for delivery of possession, the J.Drs. in E.A.No.374 of 2001 raising objections in the decree schedule are not in respect of 48 cents for total extent of Ac.1-92 cents and on 10.09.2001, on behalf of the J.Drs., memo filed offering to deliver possession of 48 cents out of Ac.1-92 cents situated in the northern side of entire Ac.1-92 cents with the boundaries East: paniki daweed land measuring 58.5 links or 38.61 feet, South: Gurapu Marthaiah (died) sons land by name Panchalaiah measuring 821 links or 541.86 feet, West: dawees land measuring 58.5 links or 38.61 feet and North: peters land measuring 821 links or 541.86 feet. The decree holders endorsed on the memo requesting time to file objections. Counter was filed therein on 30.08.2010 and the decree holder admitted in the counter as follows-It is true that in the plaint schedule the boundaries for entire extent of Ac.1-92 cents are given. But it is specifically pleaded in the plaint and also mentioned in the schedule that respondents herein are entitled to 48 cents on the northern side of Ac.1-92 cents. Thus, respondents have no objection delivering to them 48 cents on the northern side of Ac.1-92 cents it was on 26.09.2001 under executing Court observed on the docket in E.A.No.374 of 2001 that no objection reported hence petition is allowed in view of memo filed by the petitioners. E.P.No.452 of 2000 docket order of that date 26.09.2001, E.A.No.374 of 2001 is allowed and 375/2001 is closed issue deliver warrant as per memo filed by the J.Drs. by 15.10.2001.

20. In fact what the counter filed to E.A.No.374 of 2001 by the decree holders in seeking delivery of possession in E.P.No.452 of 2000 is as discussed supra disclosing from the trial Court's judgment, confirmed by the appellate Court of their 48 cents is lying on the northern most out of the total extent of Ac.1-92 cents in S.No.751. They did not admit about the measurements shown in the memo and the same was not considered by the executing Court even specific counter filed in their saying what they are entitled is the northern most 48 cents out of the total extent of Ac.1-92 cents in S.No.751. As it arises from the existence of land in S.No.751 total extent of Ac.1-92 cents not in dispute and does not arise unless there is any ascertainment of the land with such measurements shown in the memo is in existence to order pursuant to the memo for delivery. It is the crux that was imposed by the executing Court, and even not properly if at all drawn attention by the decree holders for the reason what they claimed in their counter is they are entitled to northern most 48 cents of Ac.1-92 cents in S.No.751. It is in the facts supra pursuant to the said orders of the executing Court in E.P.No.452 of 2000 and E.A.No.374 of 2001, from the delivery warrant issued by the Court entrusting to the Court Amin for delivery. Amin went and could not deliver and returned the warrant on 23.11.2001 as the decree holder was not present to deliver. When the matter again posted for delivery on payment of batta finally to 28.02.2002 dismissed for non payment of batta as stated supra same is not res judicata much less bar for maintainability of present E.P.No.124 of 2003. In the background, E.A.No.504 of 2003 and the order of the executing Court while referring the facts up to Para 10 from Para

12 observed that, boundaries given in the present execution petition No.124 of 2003 relate to boundaries given in the memo dated 10.09.2001 filed by the J.Drs. in E.A.No.374 of 2001 in the earlier E.P.No.452 of 2000. RW.1-2nd plaintiff, 1st decree holder, in his cross examination stated that they have shown boundaries for entire Ac.1-92 cents and did not specify boundaries for 48 cents for execution in the E.P. and he did not take delivery of possession as per memo dated 10.09.2001. It is not disputed that in the main suit and appeal, the J.Drs. as defendants raised similar plea and same was overruled but as per the counter filed by the decree holders 2nd plaintiff in E.A.No.374 of 2001 supra and from evidence of 2nd plaintiff 1st decree holder-RW.1, he furnished boundaries for entire Ac.1-92 cents and boundaries given in the memo of J.Drs. dated 10.09.2001 is for 48 cents only. The order of the Court earlier is for taking delivery of possession pursuant to the memo dated 10.09.2001 and decree holders have also paid delivery batta to take delivery of the same and thus in the present execution petition No.124 of 2003 the boundaries are not tallying with the memo dated 10.09.2001 and though executing Court cannot go beyond decree when it is not possible to execute the decree, the executing Court can go behind the decree and if statement of RW.1-1st decree holder is taken into consideration, delivery of possession of 48 cents as per boundaries given in the decree schedule are not confined but relating to entire property. In view of the above, E.A.No.504 of 2003 is filed directing the decree holders to take delivery of possession of the property mentioned in the memo of the J.Drs. dated 10.09.2001 and accordingly, disposed of E.A.No.504 of 2003 filed under Section 47 describing

the particulars furnished in the memo that was earlier ordered pursuant to it for delivery to the decree holder.

21. While stood thus, E.A.No.597 of 2009 filed by the decree holders/plaintiffs 2 and 3 showing as respondents, J.Drs.2, 3, 5 and 6 under Section 47 CPC with the averments that pursuant to the J.Drs. E.A.No.504 of 2003 to fix the boundaries and order delivery of 48 cents to the decree holder with specific boundaries, batta paid by the decree holder for issuing delivery warrant to take possession with assistance of mandal surveyor. The mandal surveyor visited the schedule property and found there is no land at all in S.No.751 out of Ac.1-92 cents as per the boundaries mentioned in E.A.No.504 of 2003, the Court Amin thereby returned the warrant and work memo given by the mandal surveyor respectively and thereby no delivery taken place. E.P. schedule property according to the decree under execution not tallying. Hence, to fix the earlier boundaries mentioned in the plaint and the execution petition or any other suitable property to deliver the 48 cents out of Ac.1-92 cents in S.No.751. J.Drs. filed counter through 1st J.Dr. contending the petition in E.A.No.597 of 2009 is not maintainable and decree holders have no right to file the same, which is nothing but misleading the Court and to take advantage of the unexecutable decree passed in O.S.No.464 of 1985.

22. It is pursuant to which, by order dated 20.06.2012, from the evidence of decree holder as PW.1 and 1st J.Dr. as RW.1, orally held by the executing Court in that E.A.No.597 of 2009 that PW.1 deposed of did not file any appeal against the orders in E.A.No.504

of 2003 supra and denied the suggestion of unwilling to take delivery of possession according to that order or bound to take possession as per orders in E.A.No.504 of 2003. The J.Dr.1/RW.1, deposed that as per orders in E.A.No.504 of 2003, Court Amin with surveyor came to the schedule property, however denied the suggestion, Court Amin returned the warrant stating boundaries given in E.A.No.504 of 2003 with measurements no way shows 48 cents of land in S.No.751 and by referring to the orders in E.A.No.504 of 2003 supra to deliver as per the memo dated 10.09.2001, as per that with mandal surveyor assistance; as per record, it shows mandal surveyor report dated 24.01.2005, date before it on 23.01.2005 visited the schedule property and try to measure the same and J.Drs. raised objection stating to deliver property as per orders in E.A.No.504 of 2003 dated 30.08.2004 and when he took measures pursuant to the orders, it found that the measurements given, the land beyond S.No.751 into the land of neighbours and other survey numbers and as such unable to deliver the property and he filed a rough sketch of plan of S.No.751 and the amen returned the warrant to that effect pursuant to the measurements there is no 48 cents of land in S.No.751 but for including of other survey numbers in so returning from the unable to deliver.

23. It was observed in the order in E.A.No.597 of 2009 from Para 10 onwards that what the J.Dr.1 alleged as if delivered 48 cents pursuant to the orders in E.A.No.504 of 2003 (which is based on the memo of the J.Dr. on 10.09.2001) is not correct from the report of the surveyor and Amin, delivery could not be affected. Under Section 47 CPC, all questions arising between the parties to

the suit in which decrees passed or their representatives, relating to execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree, and not by separate suit, the petition in E.A.No.597 of 2009 of decree holder is maintainable; as involves the question relating to executability hence allowed the application for execution of the decree for delivery of 48 cents as per the decree passed by the trial Court in O.S.No.464 of 1985 and in favour of the decree holder and against the J.Drs. in holding that the decree holder is entitled for delivery of 48 cents out of Ac.1-92 cents in S.No.751 within the boundaries mentioned in the schedule.

24. After said order in E.A.No.597 of 2009 dated 20.06.2012 when the decree under execution E.P.No.124 of 2003 therefrom for redelivery pursuant to the judgment and decree of trial Court confirmed by the appellate Court as referred supra which clearly shows out of Ac.1-92 cents in S.No.751 the decree holders got the northern extent of 48 cents, E.A.No.27 of 2014 is filed J.Drs.2, 3, 5 and 6 against the decree holders under Section 151 CPC, seeking to direct the Court Amin to deliver to the decree holders in accordance with the orders passed by the Court supra, dated 20.06.2012, taking into consideration of the boundaries.

25. It was averred in the affidavit petition by referring of the facts that even E.A.No.504 of 2003 was allowed directing the decree holders to take Ac.0-48 cents out of Ac.1-92 cents within the boundaries mentioned in the memo of the J.Drs. dated 10.09.2001, the decree holder filed E.A.No.597 of 2009 supra and executing Court passed order allowing same of the decree holders

entitled for Ac.0-48 cents out of Ac.1-92 cents of the northern side in S.No.751.

26. It is averred that as per the sound principle, boundaries prevail over survey numbers, as also held by the High Court in 2008 (4) ALD 695 and Court Amin tries to deliver property without considering the boundaries by saying he will follow only survey number. The Amin without considering the objections of the J.Drs. is going to deliver the property and recorded the J.Drs. as if objected and the decree holder therefrom filed application for police aid and granting any police aid apart from no necessity, in view of the earlier orders passed, direction is to be given to the Amin by the executing Court to deliver as per the execution warrant delivery of the property shown therein.

27. The decree holders filed counter opposing the E.A.No.27 of 2014 as not maintainable. They contend that the J.Drs. earlier given false measurements and by playing fraud on the executing Court, obtained orders in E.A.No.504 of 2003. It is based on the report of the Amin and the surveyor in enforcing as per the orders in E.A.No.597 of 2009, from their obstructing the execution for delivery, police aid sought for delivery of the property under execution and hence to dismiss E.A.No.27 of 2014.

28. It is after hearing both sides for no oral or documentary evidence adduced, the executing Court in E.A.No.27 of 2014 in its order of dismissal on 29.12.2015, observed by referred to the entire history supra also with reference to the order of the executing Court in E.A.No.597 of 2009 dated 20.06.2012 of the decree schedule property of Ac.0-48 cents out of Ac.1-92 cents only

in S.No.751 to be delivered of what the trial Court decreed for the northern Ac.0-48 cents out of the total extent in S.No.751 of Ac.1-92 cents and the perusal of the judgment of the trial Court clearly shows plaintiffs established their right and title over said property and the J.Drs./defendants could not establish to claim right for entire Ac.1-92 cents of S.No.751 under Ex.B1-sale deed and trial Court's decree was also confirmed in A.S.No.80 of 1982 and both Courts when so held, except disputing boundaries the defendants did not choose to deny the property in existence. When the E.P. was filed of the decree holders (E.P.No.452/2000) originally when shown for the said extent as per the decree schedule, it is the J.Drs. that filed memo on 10.09.2001 giving wrong measurements for the northern side alleged extent and the E.P. was no doubt later disposed of as per said memo. It was thereafter E.P.No.124 of 2003 filed by the decree holders, wherein the J.Drs. filed E.A.No.504 of 2003 referring to said memo and earlier orders in E.P.No.452 of 2000. Therefrom when executing Court ordered delivery with survey assistance and when the Amin and surveyor found pursuant to the delivery warrant of the measurements mentioned in the memo dated 10.09.2001 are not at all correct for said measurements extent if taken goes beyond S.No.751 extent and falling into neighbouring survey numbers and thereby, delivery could not be affected, which made the decree holder to file E.A.No.597 of 2009 that was ordering to confine to the land in S.No.751. The surveyor with Commissioner when noted down the measurements and filed sketch shows out of Ac.1-92 cents full extent in S.No.751, the J.Drs. raised fence for Ac.1-92 cents, shown in their enjoyment and beyond the fence, up to there is land

of one Peter at boundary land shown in between is only Ac.0-07 cents falling under S.No.751, for Ac.0-29 cents or so falls under S.No.750 and the Commissioner's report mentioned the same with reference to the sketch within which the property lies. The contest of the J.Drs. to said Commissioner's report and the mandal surveyor's report, as if not properly taken boundaries into consideration as per orders in E.A. dated 20.06.2012, is not at all correct. Thus, but for to say earlier pursuant to the order in E.A. when surveyor taken measurements, it was found Ac.0-12 cents only remained from what J.Drs. shown after the area fenced by them from out of S.No.751, the subsequent Commissioner's report through survey assistance filed as per order E.A.No.597 of 2009 shows the abetting land in S.No.750 falls from what J.Drs. shown if considered. The Mandal Surveyor clearly stated that E.P. schedule is tallying on the ground. J.Drs. want to deliver the extent of 36 cents supra including Ac.0-29 cents of S.No.750 including donka area leading to burial ground with only Ac.0-07 cents of S.No.751 shown in red colour. Same is not correct. The E.P. schedule and plaint schedule show the northern boundary as peters land and it is S.Nos.750 and 749. Though petitioners/J.Drs. raised the plea that therefrom boundaries are not properly described they did not bring to the notice of the Court that there is donka on the northern side covering for entire extent and excepting raising such plea, J.Drs. did not state even correct boundaries and they filed memo dated 10.09.2001 stating as if they are ready to deliver the property. Once they were not coming forward as per the decree fresh E.P.No.124 of 2003 filed and when same cause measured through surveyor, what they have shown in the memo

extends to the S.No.750 etc. It is unknown how they could give measures and boundaries for the property they wanted to deliver even not in S.No.751 covered by the decree. Except measurements noted in the memo of J.Drs. dated 10.09.2001 are not correct in other respects of boundary in the memo for the northern side of S.No.751 is correct. By recording the boundaries also, the trial Court's decree and judgment when clearly discussed all boundaries are tallying with the plaint schedule for the northern extent in S.No.751. It was observed further in E.A.No.27 of 2014 by the Court below from Para 19 onwards that, the suit is of the year 1985, which is filed 30 years ago and the judgment delivered was in the year 1992 and first appeal was disposed of in the year 1998; naturally on account of lapse of all these years, there will be some change in boundaries. It is further observed that, when both parties are fighting since 3 decades, only in respect of S.No.751 and nothing beyond and except stating there is more extent than Ac.1-92 cents in S.No.751, the J.Drs. not even filed any evidence to that effect. When the trial Court's decree and judgment are very clear in holding total extent of Ac.1-92 cents in S.No.751 and Surveyor also noted the same, the plea of the J.Drs. when rejected by the trial Court and first appellate Court, the J.Drs. cannot take the same plea of there is no such land on ground in S.No.751 as claimed by the decree holders within plaint schedule boundaries and J.Drs. having no right of filing same objections to the said report with sketch, much less to ask D.Hrs. to take the land in S.No.750 as part of the Surveyor's sketch red mark portion, for they have no such right to ask. The entire effort as seen from the series of applications filed by J.Drs. show they did not want to

deliver the property. Regarding the principles that boundaries prevail over survey numbers, if J.Drs. proved in the trial Court that there is discrepancy, things would be different and when both parties are having land in particular survey number that principle has no application, for the J.Drs. are not having right over the Ac.0-48 cents in S.No.751, which is northern out of total Ac.1-92 cents of S.No.751 and the boundaries shown in the E.P. schedule even taken into consideration the eastern boundary is land of Daweed and also vutakaruva and western boundary donka and land of Daweed land that all tallies. The donka on western side is in S.No.764 and the bund in between the fencing and the land of peter is partly in S.Nos.749, 750 & 751 and the channel in S.No.754. When within boundaries, not even there is any land to the decree holder, for the land within the boundaries in other survey numbers is not the claim of both parties, but for of land only in survey No.751 what was decreed for land to deliver to the decree holders and with reference to the boundaries tally to northern extent and on 20.06.2012 (in E.A.No.597 of 2009) it was ordered to deliver northern portion Ac.0-48 cents out of the total extent of S.No.751 alone and thereby there are no merits in the application of E.A.No.27 of 2014.

29. Coming to the revision grounds and the oral submissions at length and during several dates of hearing by the learned senior counsel for the revision petitioners-J.Drs. supra in impugning said orders in E.A.No.27 of 2014, dated 29.12.2015, it is the contention of the learned counsel for the revision petitioners/J.Drs.2, 3, 5 & 6 that impugned order is perverse, contrary to law and invoked jurisdiction beyond decree of the suit on date 10.08.1992 and even

E.P. filed of execution of said decree the earlier orders speak only delivery of Ac.0-48 cents as per the decree schedule and executing Court has no jurisdiction to rewrite the earlier orders and that too prayer in E.A.597 of 2009 is seeking direction to Court below to follow the orders dated 20.06.2012 and bailiff shall act upon boundaries and not at the instance of the decree holder beyond the boundaries pursuant to the intention of the decree holder to get property, for boundaries prevail over survey number as laid down in M.Chandraiah's case reported in 2008 (4) ALD 695 and the court below instead in the erroneous view, should have seen that it can execute the decree and not beyond and when boundaries not tallied with claim of decree holder to the suit schedule properties in S.No.751 to over look the same and the suit schedule property is situated in northern boundary of S.No.751 and executing Court even for that cannot over look the boundaries when prevail over survey number and therefrom when there is no land in S.No.751 to deliver within the boundaries, it could not order delivery and hence sought to set aside the impugned order by allowing revision.

30. Learned counsel for the decree holders/respondents to the revision supported the order of the lower Court dismissing the application in E.A.No.27 of 2014 which is saying in consonance with the order in E.A.No.597 of 2009 dated 20.06.2012 which is in pursuance to the decree of the suit O.S.No.464 of 1985 dated 10.08.1992 confirmed by the appellate Court dismissal judgment by correlating the boundaries as tallying to northern Ac.0-48 cents out of total Ac.1-92 cents of S.No.751 only and nothing beyond and when land claimed is within the S.No.751 but for the northern extent beyond S.No.751, for the boundaries mis-description, there

was explanation from the evidence as concluded by the trial Court and even the memo of the J.Drs. dated 10.09.1991 other than measurements only reflects for northern side Ac.0-48 cents of out of total extent of Ac.1-92 cents in S.No.751 and the measurements given by playing mischief and fraud on Court by extending to some other survey numbers, which is when not the purport of the trial Court decree and judgment for execution and thereby sought for dismissal of the revision.

31. Heard both sides at length and perused the material on record. The facts and chronology of events and several orders in the Court proceedings since discussed in detail supra, same no way requires repetition but for to the limited extent of further discussion of the lis within the scope of revision to answer.

32. The J.Drs. being conscious from the beginning and including from the plea of the suit of the suit claim is for Ac.0-48 cents out of total extent of Ac.1-92 cents out of S.No.751 only and not for any other survey number. No doubt as held by the trial Court in its judgment and as discussed by the impugned order of the lower Court in E.A.No.27 of 2014, also in E.A.No.597 of 2009, there could have been clear description required of the trial Court's decree while saying in specific on east that of Daweed's land to show also of vutakaruva and so far as west while saying as donka and Daweeds land that tallies but for at best if at all beyond donka only land of daweed and those boundaries are tallying thereby and for South boundary of Gurapu Laxmaiah, instead of saying land of J.Drs. if any for what the J.Drs. claim purchased under Ex.B1 for they could have established their predecessor's title to make the

positive claim from that document for entire extent of Ac.1-92 cents in S.No.751. Thereby it reflects only from their claim as per trial Court's judgment to confine to remaining southern extent, after considering plaintiffs extent of the plaint schedule decreed for northern Ac.0-48 cents out of S.No.751. Thus the northern 48 cents in S.No.751 belongs to the D.Hrs. and the remaining as southern boundary to it of the judgment debtors the same was confirmed by the appellate Court. Even the memo of the J.Drs. dated 10.09.2001 by voluntary alleging come forward saying they want to deliver northern portion and having properly described in the boundaries, they have given wrong measurements extending beyond S.No.751 and for that they have no such right to travel beyond the decree. As explained in trial of the suit in this regard and therefrom what was reflected by the observations and findings in the judgment of the trial Court, the D.Hrs. should have sought for in the decree schedule, amendment to reflect boundaries as per the judgment, instead of reflecting plaint schedule as it is for the executable decree passed for delivery of possession by declared title of plaintiffs for the northern Ac.0-48 cents out of S.No.751 as the suit claim is for Ac.0-48 cents in S.No.751 only out of total extent of that S.No.751 of Ac.1-92 cents. It was not done as discussed supra, though it could have been from the legal position discussed supra, however that does not mean executing Court is going beyond the decree, for the decree to be drafted is from the judgment to clarify in the decree schedule, rather than incorporating the plaint schedule, apart from any mis-description of any of the boundaries i.e., southern boundary or northern boundary or eastern or western boundaries for the suit claim is

only for Ac.0-48 cents out of S.No.751, Ac.1-92 cents very clearly made and thereby when survey number and extent therein are clearly given, mere mis-description of any boundary not fatal, particularly of south side, if any from when J.Drs. claimed for the same. The trial Court also categorically held that the plaintiffs suit claim is tallied from Exs.A1 to A3 and evidence of plaintiffs side and defendants from but for disputing the boundaries disclose during trial what are the correct boundaries for the plaintiffs claim and it is not even the case of defendants of the plaintiffs got land, other than in S.No.751 and they cannot say even by relying upon Ex.A1 from their written statement referring through document of 1953 settlement that reflects to S.No.751 as part of the plaintiffs claim of ancestral property of 1st plaintiff's father and his brothers, out of which the settlement was for a limited extent and what the 1st defendant claims purchased under Ex.B1 is out of that survey number from other agnates of 1st plaintiff, once the same is clarified as per the order in E.A.No.597 of 2009 in saying the property to be delivered is the northern Ac.0-48 cents out of the total extent of Ac.1-92 cents of S.No.751 only, though having clarified with reference to survey numbers and extent not clarified regarding the boundaries; when the principle of boundaries prevail over survey number have no application herein, for no ambiguity in survey number and extent; for the claim is clearly for part of the survey number that is for Ac.0-48 cents out of Ac.1-92 cents in S.No.751, a mere mis-description of boundaries no way fatal, that too the purpose is for identification of land, and not to allow any hair splitting contentions to raise, and as held in **Ravinder Kaur**

Vs. Ashok Kumar and Another⁶. The factual issue settled in the suit for ejectment thereby cannot be re-agitated in execution. Once such is the case the J.Drs. are estopped in raising the same despite the decree of the trial Court for Ac.0-48 cents northern out of total Ac.1-92 cents only in S.No.751. The J.Drs. thereby cannot say still as if to deliver only with reference to boundaries any land of others in survey numbers. Thus as stated supra, from the decree and judgment of the trial Court confirmed by the appellate Court, the execution is for the northern Ac.0-48 cents out of total 1-92 cents in S.No.751 only, the J.Drs. have no right to object to it even by the alleged memo having come forward to deliver the north portion of Ac.0-48 cents, they could not have been given the so called measurements at this choice by extending to some other survey numbers. When that is the case, same is nothing but fraud on court and even the D.Hrs. filed through counter to the said memo in E.A.No.504 of 2003 of they have no objections for taking delivery of the northern Ac.0-48 cents out of total 1-92 cents in S.No.751 only. The executing Court in this regard did not properly drawn attention of the judicial mind, in accepting the memo, as if with no objections for said measurements and the same was rightly clarified on the application of the D.Hrs. in E.A.No.597 of 2009 and once same is for delivery of the property not with reference to the boundaries, but clearly for the northern Ac.0-48 cents out of Ac.1-92 cents in S.No.751, whatever if there is any excess beyond 1-92 cents, the J.Drs. can take from that S.No.751, for decree holder can't claim beyond Ac.0-48 cents northern, out of the full extent of S.No.751. The same when clarified, the question

⁶ (2003) 8 SCC 289

of seeking any orders in the impugned application in E.A.No.27 of 2014 does not arise. Thus the impugned order when directing delivery of the property supra; still the J.Drs. want to deliver only the extent within the boundaries described in the plaint schedule (by totally ignoring specific extent of Ac.0-48 cents out of Ac.1-92 cents in S.No.751), does not arise and same was the conclusion of the lower Court in dismissing the E.A.No.27 of 2014, for this Court while sitting in revision against the impugned order there is nothing to interfere. As held by the Apex Court in **Ravinder Kaur supra**, should be vigilant to see through the diabolical plans to deny the decree holder fruits of the decree obtained. Thus when necessary facts brought to the Court, the Court cannot perpetuate any attempt by the J.Drs. to commit any mischief to the decree of the trial Court under execution, though boundaries not properly reflected in the decree in simply adopting plaint schedule boundaries, instead reflecting from the judgment of what is clarified, that too in any boundaries mis-description it is insignificant, for survey number and its total extent and the claim in part of it is very clear. When it is very clear for northern Ac.0-48 cents out of Ac.1-92 cents in S.No.751, that too under Section 47 CPC it can be answered for there is no need to drive for filing fresh suit or seeking for partition, as part of duty of the executing Court to decide the same to shorten the litigation and to sub serve the ends of justice and to prevent any abuse of process in the attempt of J.Drs.

33. Accordingly and in the result and for the observations supra in the previous Para, the revision petition is dismissed by confirming the order of the lower Court for providing necessary

police help for delivering the northern Ac.0-48 cents out of the total Ac.1-92 cents only and out of S.No.751 only to the decree holders by the judgment debtors with assistance of surveyor and commissioner with reference to the plans reflected in the impugned order of the lower Court to proceed further in the execution.

Consequently, miscellaneous petitions, if any shall stand dismissed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 19.10.2016
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