

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.1659 OF 2013

ORDER:

The Civil Revision Petition is filed against the order dated 10.12.2012 passed in I.A. No.579 of 2012 in O.S. No.370 of 2005 on the file of II Additional Junior Civil Judge, Ranga Reddy District.

2) Heard learned counsel for the revision petitioner and learned counsel for the respondents. Perused the material on record.

3) The revision petitioner and respondent No.3 herein filed O.S. No.370 of 2005 for cancellation of registered sale deed dated 13.08.1990 to the extent of 500 Sq.yds out of Ac.3.00 gts in S.No.362 of Khanajiguda Village, Alwal Municipality, Malkajgiri Mandal, Ranga Reddy District. In the plaint, right from the cause title to the prayer and verification, the extent of sale deed schedule represents 500 Sq.yds saying same is liable to be set-aside. However, in the plaint schedule instead of mentioning only for 500 Sq.yds out of the total extent of Ac.3.00 gts of S.No.362 supra, of the property which is at north east of the total extent, there is a mis-description as if for Ac.3.00 gts and that is now sought for amendment so to correct. No doubt, after chief affidavit of plaintiff filed and it appears faced cross examination in part, the amendment sought which does not come within the meaning of proviso to Order VI Rule 17 C.P.C amended w.e.f., 01.07.2002, as had it been with due diligence it could be filed atleast before filing of chief affidavit. However the parties right to seek such a correction by amendment sought is different from duty of the Court to allow the correction. The very suit for cancellation of sale deed represents only 500 Sq.yds and the schedule description shows wrongly for anything beyond, once same brought to the notice of the Court, the Court can allow such amendment to avoid future litigations between the parties and to confine the lis to the correct extent. The Apex Court in ***Rajesh Kumar Aggarwal vs K.K.Modi***^[1] categorically held in this regard that it is the duty of the Court primarily to decide whether the amendment is necessary for determining the real question in controversy and to avoid future litigations, so to permit.

4) Having regard to the above, the Civil Revision Petition is allowed to correct the plaint schedule description for 500 Sq.yds out of total extent of Ac.3.00 gts in S.No.362 subject to payment of costs of Rs.2,000/- by the revision petitioner (plaintiff) to the defendants within (15) days from the date of receipt of the order, if they and receive issue a receipt, else to deposit the same to the credit of District Legal Services Authority and file proof before the Court below. No order as to costs.

5) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dr.JUSTICE B. SIVA SANKARA RAO

Dt.19.08.2016
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[\[1\]](#) AIR 2006 SC 1647