

THE HON'BLE SRI JUSTICE S.V.BHATT  
CIVIL REVISION PETITION No.3967 of 2016

ORDER:

Heard Mr. M. Ramalingeswara Reddy for revision petitioner and Mr. K. Sita Ram for respondents.

2. Plaintiff in O.S.No.61 of 2012 in the Court of the Principal Junior Civil Judge, Adoni is the revision petitioner. The revision petitioner filed the suit for perpetual injunction restraining respondents herein from interfering with plaintiff's possession and enjoyment of plaint schedule property. The plaint schedule reads as follows:

SCHEDULE

The land situated within the Regn Jurisdiction of Kurnool and within the Sub-Regn. Dist of Adoni with the following particulars.

| <u>NAME OF THE VILLAGE</u>                | <u>SURVEY NO.</u> | <u>EXTENT</u> |
|-------------------------------------------|-------------------|---------------|
| Mykadona Village,<br>Peddakadabur Mandal, | 187               | Ac.6-83 cents |

BOUNDARIES:

East: S.No.187 and Road.  
West: S.No.177  
North: Abdul Razak  
South: Village site poramboku

3. The revision petitioner filed I.A.No.412 of 2015 for appointment of Advocate Commissioner to note down the physical features, localize the suit schedule property and file report. The Advocate Commissioner's report has been filed. The petitioner, after verifying the localization of the suit schedule property, has been advised to file a petition for amendment of pleadings and also the prayer portion of the plaint. The proposed amendments read as follows:

1. Add : Page No.2 in para No.4 in line number 21 after about delete 1½ and add Ac.1-06 cents and 22<sup>nd</sup> line delete 5-53 cents and add Ac.5-77 cents.
2. Add : Para No.6(A) The Plaintiff on humanitarian ground the Plaintiff prepare to forgo Ac.1-06 cents out of Ac.6-83 cents and seeking declaration of right and title over Ac.5-77 cents out of Ac.6-83 cents. Hence, the Plaintiff right and title over Ac.5-77 cents may declared. Hence this suit.
3. Add : 8(A) For the purpose of court fee and Jurisdiction the suit is valued at Rs.4,61,600/- and half of the market value for declaration comes to Rs.2,30,800/- and court fee of Rs.4,826/- is paid under Section 24 (5) (B) of A.P.C.F. Act.
4. Add : Schedule delete Ac.6-83 cents and Add Ac.5-77 cents.
5. Add : Boundaries : East delete Road and Add Land given to burial ground by the Plaintiff.

4. Respondents filed detailed counter affidavit and opposed the prayer for amendment on the ground that the proposed amendment changes the cause of action etc. The proposed amendment is beyond the period of limitation. The amendment, if permitted, takes away the admission by way of pleading and that the amendment, if permitted, would substantially change the frame of the suit. Hence, prayed for dismissal of IA.

5. The trial Court framed the following point:

“Whether the petitioner is entitled for grant of relief as prayed for?”

6. The learned trial Judge referred to, in a succinct manner, the citations relied upon by the revision petitioner as well as respondents, but the order impugned does not refer to either appreciation or application of the ratio laid down in the decisions relied upon by both sides.

7. Be that as it may, the reasons recorded by the trial Court are summarized as follows:

The petitioner, at the first instance, has prayed for amendment localizing the area occupied by Tombs as Ac.1.50 cents and now changes the same as Ac.1.06 cents; the petitioner has not come to the Court with clean hands; the amendment, if permitted, virtually amounts to withdrawing the admission by way of pleading of the petitioner and dismissed the IA. Hence, the revision.

8. Learned counsel appearing for the parties have substantially reiterated the case set out in the affidavit and the counter affidavit of their respective parties. To avoid repetition, I am not proposing to refer to these submissions for this Court is of the view that the overall consideration of the prayer for amendment of plaint by the trial Court is not correct, legal and tenable. The petitioner seeks amendment to the prayer viz. from the relief of perpetual injunction to the relief of declaration of right and perpetual injunction; amend extent from Ac.1.50 cents to Ac.1.06 cents. Except changing the extent and adding the prayer for declaratory relief, the plaintiff has not introduced any other circumstance to infer that if the amendment is ordered, the same would either change the cause of action or frame of suit.

9. The reasons given by the trial Court are completely unsustainable. Firstly, I am not in agreement with the submission made by Mr. K. Sita Ram viz. that the prayer for declaration is beyond the limitation, for in a fact situation as the present one, the limitation is always a question of fact and law and secondly, the learned counsel could not satisfy this Court by reference to the stand taken in the

counter affidavit that the proposed amendments are illegal and unavailable.

10. The trial Court, having observed that the request for amendment is considered on case to case basis, has not properly appreciated the tenor of proposed amendment. Amendment to prayer is normally permitted to avoid multiplicity of proceedings and resolve a dispute in a comprehensive suit or proceeding. Likewise, whether encroachment by respondents is Ac.1.06 cents or Ac.1.50 cents is not determined at this stage, but matter of evidence. The reasoning of the trial Court is completely unconvincing and the order impugned in the revision is liable to be set aside. The amendment prayed through I.A.No.412 of 2015 is ordered. This Court finds another omission in the amendments proposed to be made by the revision petitioner viz. having made a pleading for declaration of right, appropriate pleading should also be made in para 9 of the plaint. To meet the ends of justice and to avoid multiplicity of proceedings, the petitioner is permitted to include prayer for declaration of title in para 9 of the plaint.

11 The request for amendment alone is considered by this Court. Neither this Court has expressed any view on merits of facts or law in issue between parties. The respondents are given liberty to file additional written statement, if so advised, by taking all factual and legal pleas available in law. The amended copy of plaintiff shall be filed within two (2) weeks from the date of receipt of copy of this order.

The civil revision petition is allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

October 13, 2016  
DSK

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S. V. BHATT, J

