

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.2294 of 2015

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India by the petitioner/plaintiff is directed against the orders dated 20.01.2015 of the learned I Additional Chief Judge, City Civil Court, Secunderabad passed in EASR.no.14412 of 2014 in EP.no.11 of 2014 in OS.no.26 of 1983 filed under Section 152 read with Section 151 of the Code of Civil Procedure, 1908.

2. I have heard the submissions of the learned counsel for the revision petitioner/DHr and the learned counsel for the 3rd respondent. There is no appearance for the other respondents.

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

The DHr brought the suit OS.no.26 of 1983 (Old OS.no.638 of 1980) against the sole defendant (since died) for specific performance of an agreement dated 05.08.1975 in respect of a property which is described in the schedule annexed to the plaint. The sole defendant filed a written statement resisting the suit. The said suit was decreed on 06.06.1988 after full fledged trial. The sole defendant had preferred an appeal in CCCA.no.128 of 1998 against the decree and judgment of the trial Court. The said appeal, *vide* judgment dated 21.11.2002, was dismissed for default. After the decree of the trial Court has attained finality, the DHr filed EP no. 11 of 2014. The JDrs.2 to 5, who are the legal representatives of the deceased sole defendant, having entered appearance through their advocate had remained *ex parte*. The Court of execution by order dated 13.10.2014 directed the DHr to file the draft sale deed and also deposit the required amount for purchase of non judicial stamp papers for engrossing, execution and registration of the sale deed in terms of the decree. On the same day, the said JDrs 2 to 5 had filed EA.no.94 of 2014 requesting to set aside the *ex*

parte order and permit them to file a counter in the execution proceedings. The said EA was allowed on 12.11.2014. A draft sale deed was filed by the DHr in compliance of the orders dated 13.10.2014 of the Court below. The Office of the Court raised an objection in respect of the total extent of property which was not mentioned in the decree. Therefore, after noticing for the first time the inadvertent error, the DHr was advised to take appropriate steps for amendment of the plaint as well as the decree. Accordingly, the DHr had filed the aforementioned EA seeking permission for amendment of the schedule of the plaint and consequently the schedule of the decree as stated in the affidavit and the petition. That application was not registered as the Court of execution wanted to hear on the aspect of maintainability of the petition for amendment, which was filed at the stage of execution. After hearing the learned counsel for the DHr, the Court below had dismissed the EASR by the orders impugned. Therefore, the DHr has filed this present CRP.

4. The case of the DHr in support of the request for amendment, in brief, is as follows:

In the plaint, the suit schedule property was described as under: **‘All that premises bearing Municipal old no.8570-A New No.5-2-175/1, situate at Rastrapati Road, consisting of celler ground floor and first floor bounded on North by: Sri Satyanarayana Temple property; South by: Rastrapati Road; East by: premises held by Andhra Bank; West by: Premises held by Autofin Ltd.;’** After the decree was passed, in the decree schedule, the property was described as mentioned in the schedule of the plaint. In fact, during the pendency of the suit, the sole defendant having filed a written statement had appeared as a witness in the suit. He had also preferred a civil appeal before this Court against the decree and judgment of the trial Court. On his death during the pendency of the first appeal, the respondents 2 to 5 were brought on record, they being his legal representatives. The said first appeal was dismissed by this Court on 21.11.2002. Subsequently, the EP was filed. In that execution petition, directions to file the draft sale deed and deposit the necessary amount towards non judicial stamp papers for engrossing, executing and registering

the sale deed were given. Thus, during the entire proceedings, there was never any dispute as to the identity of the suit property. After filing of the draft sale deed and on the objection taken by the office of the Court of execution, the mistake which had inadvertently occurred has come to be noticed by the plaintiff/DHr. During the drafting of the plaint by inadvertence, the total area of the suit property and the municipal house numbers of the properties to the East and West of the premises have not been mentioned in the schedule of the plaint. The said error, which is an accidental error, if permitted to be corrected no prejudice would be caused to the respondents. By not permitting the amendment, the DHr cannot be deprived of the fruits of the decree obtained in a very old suit, which has become final and binding. If the amendment is not permitted the DHr would be put to serious and irreparable loss. Hence, after deleting the aforementioned schedule in the plaint and the decree, the following schedule is to be incorporated by way of amendment of the schedules of the plaint and the decree: **‘All that premises bearing Municipal Old No.8570-A, No.5-2-175/1, admeasuring 257.86 Sq.yards or 215.68 Sq.Mtrs or 2320.75 Sq.ftet, consisting of Cellar, Ground and First floor situated at Rasthrapathi Road, Secunderabad, Telangana State bounded by North: Sri Satyanarayana Temple property; Sout: Rastrapathi Road; East: H.No.5-2-174/2/7; West: H.No.5-2-175/2.’**

5. The learned counsel for the DHr while narrating the facts, the case pleaded by the DHr in support of the request for amendment that is being sought for and the sequence of events, which are already stated supra, had further contended as follows: ‘The court of execution ought to have permitted the amendment of the schedules of the plaint and the decree as the error had occasioned purely on account of inadvertence and accident. The Court below failed to appreciate the legal position in the decisions of the Supreme Court in **Babulal v. M/s.Hazari Lal Kishori Lal**^[1]; **Niyamat Ali Molla v. Sonargon Housing Coop Society Ltd.**,^[2] **Bela Devi v. Bon Behary Roy**^[3] and had erroneously dismissed the application of the DHr filed for amendment of the schedule. The Court below ought to have seen that it has

got ample power to not only rectify the mistakes that have crept into the decree on account of the Court's own accidental slip or omission but also to rectify any mistake made by the parties for instance a mistake in the description of properties in the deeds. The court below ought to have seen that during the entire proceedings, the identity of the property was not disputed, though the defendant/s had contested the suit on various other grounds. In the execution proceedings, when the draft sale deed was furnished, the office of the Court below had raised an objection in regard to non mentioning of the total extent of the property in the decree schedule, and, therefore, the necessity for seeking the amendment has arisen. The learned Judge erred in observing that the DHr is introducing details of door numbers of third party premises as boundaries of the suit schedule property on Eastern and Western sides and also measurements of his choice in the description of the suit schedule property. The court below ought to have seen that by the proposed amendment, the material particulars in regard to the description of the property are not being changed in any manner and that the identity of the property remains the same despite allowing the amendment. The court below ought to have seen that the total extent of the property, which is now being sought to be included by way of amendment is already mentioned in the suit agreement for sale, which is the basis for the suit. In the boundaries mentioned in the original schedule, the names of the occupants of the adjacent properties were mentioned, but, now, the house numbers of the adjoining properties are being shown in the boundaries of the suit schedule property by way of amendment; such, addition of the door numbers of adjacent properties in the boundaries on the East and West would in no manner modify the extent of the property. The Court below ought to have seen that by way of the proposed amendment of the schedule, the DHr is not trying to enlarge the extent of the suit schedule property. The court below ought to have seen that it is having ample power and jurisdiction to grant the relief.'

6. At the hearing, the learned counsel for the 3rd respondent would submit that the order impugned admittedly was passed without notices to any of the

JDr's and without an opportunity to them to file counters and submit their defence and that, therefore, the order is unsustainable. He would alternatively submit that in case this Court comes to the conclusion that the EASR is maintainable, a direction may be given to the trial Court to number the same and dispose of the same afresh after giving an opportunity of hearing to the respondents 2 to 5.

7. I have bestowed my attention to the facts and the submissions. As already noted, the execution application, which is filed for amendment of the schedule of the plaint as well as the decree as stated above, was not registered and the Court below after hearing the learned counsel for the DHr on the question of maintainability of the said petition had eventually passed orders of dismissal, on merits. The said orders are impugned in this revision. When the execution application was not registered and was heard on the question of maintainability, the Court below ought to have considered that limited question and ought to have either rejected the petition at the stage of admission or ought to have directed the office to register the application. In the later case, the Court is required to hear and dispose of the application of the DHr on merits, after directing issuance of notices to the JDrs/Respondents 2 to 5. However, even without giving notice to the JDrs, the EA filed by the DHr was dismissed. Be that as it may. A perusal of the original schedule mentioned in the plaint and the decree on one hand and the schedule being sought to be introduced by way of proposed amendment on the other, lays bare the changes that the DHr is intending to bring about in the schedule by way of amendment. Therefore, there is no need to dilate on the changes being sought to be introduced in the schedule of the decree.

8. Be that as it may, the learned counsel for the DHr placed reliance on the decisions referred to supra and also on the following decisions, in support of the submission that the application is maintainable.

1. **Pratibha Singh v. Shanti Devi Prasad**^[4]
2. **Order dated 06.01.2014 of the Delhi High Court in CM(M).no.1299/2013 and CM.no.19310 of 2013 between Sh. Ashok Kumar Ahuja v. Sh. Gulab Rai Khanchandani**

3. Kalkonda Pandu Rangaiah v. Kalkonda Krishnaiah ^[5]

I have gone through the decisions cited. In view of the precedential guidance, the maintainability of the petition filed for amendment of the schedule of the plaint as well as the decree is not in doubt. Therefore, the main question to be considered by the Court below is as to whether in the facts and circumstances of the case the amendment as sought for in respect of the schedule of the plaint and the decree shall be permitted or not. In the well considered view of this Court, while considering the said question the Court below has to incidentally consider, apart from other contentions of the parties, the question as to whether the amendment if permitted brings about any drastic or major changes in the description and the identity of the property involved in the *lis*. Therefore, the DHr has to in the first place, establish that there will either be no material change, much less a major change, or a change in the identity of the schedule of property despite allowing the amendment of the schedule as prayed for. Now that this Court had held that the application is maintainable, in the well considered view of this Court, the CRP can be disposed of with appropriate directions.

9.. Having regard to the facts and the discussions *supra*, this Court is of the considered view that the order impugned is liable to be set aside and that the execution application (EASR) has to be remitted to the Court below for disposal afresh, in strict accordance with the procedure established by law, after directing notices to the respondents and giving them an opportunity to file their counters, if any, and contest the matter. It is made clear that before considering the merits of the said application, the Court below shall register the EASR and give the plaintiff an opportunity to produce any acceptable and relevant evidence, if necessary, by seeking appointment of an advocate commissioner for identification of the property in question, to substantiate the request for amendment of the schedule.

10. In the result, the Civil Revision Petition is allowed and the order impugned is set aside and the EASR.no.14412 of 2014 in EP.no.11 of 2014 is remitted to the Court below for disposal afresh in strict accordance with the

procedure established by law as directed hereinabove. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this CRP shall stand closed.

M.SEETHARAMA MURTI, J

18th April, 2016
Vjl

[\[1\]](#) (1982) 1 SCC 525

[\[2\]](#) (2007) 13 SCC 421

[\[3\]](#) AIR 1952 Cal 86

[\[4\]](#) (2003) 2 SCC 330

[\[5\]](#) AIR 1974 AP 201