

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION No.2718 OF 2017

DATED: 30.06.2017

Between:

Gandepalli Lakshmana Rao
S/o Chellayya, aged 45 years
Occ:Electrician R/o 3rd Ward,
Narsipatnam, Visakhapatnam.

... Petitioner

And

Gandepalli Atchutarao and others.

... Respondents

COUNSEL FOR THE PETITIONER: Sri M.V.Hanumantha Rao



THE COURT MADE THE FOLLOWING:

ORDER:

This revision petition arises out of order dated 28.02.2017 in I.A.No.29 of 2017 in O.S.No.127 of 2011 on the file of the Senior Civil Judge, Narsipatnam.

2. Respondent No.1 herein has filed the above referred suit for specific performance of agreement of sale against the petitioner and respondents 2 and 3. After the trial was commenced, respondent No.1 has filed I.A.No.29 of 2017 under Order VI Rule 17 of the Code of Civil Procedure, 1908 (CPC) seeking permission to amend the plaint schedule to the extent of southern boundary of Item No.2 after realizing that it was wrongly described in the plaint schedule, in order to bring the same in conformity with the schedule of property shown in the suit agreement of sale and also the legal notice. On considering the respective pleadings of the parties and hearing learned counsel for the parties, the lower Court has allowed the said application.

3. At the hearing, Sri M.V.Hanumantha Rao, learned counsel for the petitioner laid emphasis on the fact that respondent No.1 is not diligent in pursuing his cause as he has filed the application for amendment of schedule property after commencement of the trial and hence the lower Court ought not to have allowed his application.

4. The fact that the proposed amendment sought for by respondent No.1 is to bring the plaint schedule property in conformity with the schedule of the property mentioned in the agreement of sale and also the legal notice is not in dispute. Therefore, by said amendment, respondent No.1 is not seeking to

change the identity of the property and on the contrary, he sought to correct the error committed in the description of southern boundary of Item No.2, so as to bring the same in conformity with the boundaries mentioned in the agreement of sale and the legal notice. As rightly observed by the lower Court, the proposed amendment would not cause any prejudice to the interest of the petitioner and that the suit will not undergo any change. The petitioner cannot be allowed to take undue advantage of the mistake of respondent No.1 in mentioning the boundary of one side in one of the items of the suit schedule property. As regards the submission of the learned counsel for the petitioner that the application is belated, Order VI Rule 17 CPC does not give the Courts unfettered power of allowing the amendments. If the Court is satisfied that refusal of the amendment will cause failure of justice, it is empowered to order such amendment, even after commencement of trial.

5. For the aforementioned reasons, I do not find any merit in the revision petition and the same is accordingly, dismissed.

6. As a sequel to dismissal of the revision petition, C.R.P.M.P.No.3582 of 2017 shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

JUNE 30, 2017
YVL

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