

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4358 of 2017

ORDER:

1) Assailing the order dated 19.06.2017, passed in I.A.No.166 of 2017 in O.S.No.269 of 2010 on the file of the Principal Senior Civil Judge, Chittoor, wherein an application made under Order VIII Rule 9 of C.P.C., to receive additional written statement, was dismissed, the present C.R.P., is filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The respondent/plaintiff herein filed the above suit for declaration of right and title over the plaint schedule property. The averments in the plaint would show that one Munaswamy Reddy, Govinda Reddy, Venkata Reddy and one Kone Reddy are the brothers constituting a joint family. The land in Sy.Nos.230/1, 230/2 and 232 belong to their joint family. The said land was locally called as "Dora Cheruvu Kinda Land". The land in Sy.No.230/1 is situated on the North-West corner of Sy.No.230 and to the East of the land in Sy.no.232. It is stated that portions of the land in Sy.No.230/1 were merged with land in Sy.No.232 and 230/2. The above mentioned brothers have divided the above properties and other properties, by means of family arrangement in the year 1952 and a partition list was reduced into writing. The plaint schedule land fell

to the share of one Govinda Reddy, who is said to have sold the land to the brother of the plaintiff by name L.N. Muraleeswara Reddy. Subsequently, the said land was allotted to the plaintiff in the partition between herself and her family members. It is stated that since then the plaintiff is in possession and enjoyment of the said land. The averments in the affidavit show that the family members of the plaintiff have planted mango garden after purchase and they have also fenced their portion of land including the plaint schedule property. The pattadar passbooks and title deeds were said to have been issued to the plaintiff. It was further stated that in the sale deed executed in favour of the brother of the plaintiff, the details of the land with boundaries were mentioned though an incorrect survey number was mentioned. While things stood thus, the defendant started interfering with the property, which lead to filing of the present suit.

3) A written statement came to be filed disputing the averments made in the affidavit filed in support of the plaint. It is stated that even the boundaries mentioned, to the plaint schedule land, are incorrect. As per the written statement, the correct boundaries are East: land of Govinda Reddy i.e., the land of the defendant; South: land of Chiranjeevi; West: land of Munaswamy Reddy at present the land of Vasudeva Reddy; North: Chittoor Palamaner Highway. It is further stated in the written statement that the disputed land is the land of the defendant and that his father never sold or alienated the

same in favour of the brother of the plaintiff. He denied the execution of the sale deed and also the issuance of pattadar passbooks and title deeds. He refers to the orders passed by the Joint Collector, Chittoor wherein the orders of the R.D.O., in canceling the entries made in the revenue records was upheld. The written statement also shows that the defendant sought leave of the court to file additional written statement.

4) Pending the suit proceedings, the present I.A., came to be filed seeking permission of the court to file additional written statement. As per the averments made in the affidavit, the property in dispute was never sold or alienated to the plaintiff's family and the allegation that survey number is mentioned in the sale deed is not correct. It is also false to state that taking advantage of the wrong survey number mentioned in the sale deed, the defendant is making claim and obtained pattadar passbooks and title deeds. It is further stated that the plaint schedule property is in Sy.No.230/1 and it has nothing to do with the land in Sy.No.232. He also refers to an application made before the Court for appointment of Advocate-Commissioner for localization and demarcation of the said land which is still pending for consideration. Having regard to the above, he submits that filing of additional written statement will not in anyway prejudice the plaintiff, as it is being done only to explain the facts in detail.

5) A counter came to be filed disputing the same. As per the counter, the petitioner herein is trying to introduce a new case which was not his version in the written statement filed immediately after filing of the suit. It is said that 7 years later, the present application came to be filed, when the case is at the stage of defendant's evidence. It is stated that since the boundaries mentioned in the additional written statement and in the original written statement are different, the defendant is now trying to introduce a new case, which cannot be permitted. After considering the rival submissions made, the trial court, by its order dated 19.06.2017 rejected the request. Challenging the same, the present C.R.P. is filed.

6) Reiterating the averments made in the affidavit filed in support of the I.A., Sri S.S.Bhatt, the learned counsel for the petitioner would submit that the petitioner/defendant is only trying to explain to the court the facts in issue in detail and that it is false to state that he is introducing a new case. It is urged that as he sought leave of the court for filing additional written statement, the trial court erred in rejecting his request.

7) Sri T.Rajesh Kumar, learned counsel for the respondent opposed the same contending that a reading of the written statement and additional written statement would clearly indicate that the petitioner intend to introduce a new case, thereby causing great prejudice to the plaintiff.

8) In order to appreciate the same, it would be necessary to refer to the averments made in the plaint, written statement and additional written statement with regard to the boundaries.

As per the averments in the plaint, the boundaries of the plaint schedule property are as under:-

East : Land of Munaswamy Reddy (now in possession of K.Vasudeva Reddy)

West : Land of Munaswamy Reddy (now in possession of Smt. K.Kalavathi)

North: Palamaner - Chittoor Trunk road

South: Road leads to bodabandla village.

In the written statement, the boundaries are as under:-

East : Land of Govinda Reddy i.e., at present the land of the defendant.

South: Land of Chiranjeevi

West : Land of Munaswamy Reddy at present the land of Vasudeva Reddy

North: Chittoor Palamaner Highway.

In the additional written statement, the boundaries are as under:-

East : Mango garden aged about 10 years of Munaswamy Reddy in S.No.230/2.

West : Vacant land of Jagannadha Reddy S.No.233 and Munaswamy Reddy Mango garden S.No.232

North: Chittoor Palamaner Trunk road.

South: Mango garden of Munaswamy Reddy which are aged about 60 years in S.No.232.

9) A perusal of the above, would clearly indicate that there is a variance in the boundaries not only with the boundaries mentioned in the plaint but also with the written statement filed by the defendant earlier. As per the original written statement, on the west is the land of Munaswamy Reddy (which at present is the land of Vasudeva Reddy) but in the additional written statement it is shown on the land of Jagannath Reddy and Munaswamy Reddy. Similarly as per the written statement, land of Chiranjeevi was said to be present on the southern side but in the additional written statement, mango garden of Munaswamy Reddy, which is aged about 60 years was shown on the southern side. It is clear that the petitioner herein is trying to introduce certain new facts, which was not in his case even in the original written statement. If really there was a mistake in mentioning schedule nothing prevented him to make a request for correction at the earliest. No reasons are given as to why the petitioner could not plead the proposed pleadings at the earlier stage. No explanation is given for making the said request after 7 years.

10) There is no dispute that the petitioner sought permission to file additional written statement, but in the instant case, as observed above, the additional written statement would change the basic structure of the case and it will take away the admission, made in the earlier written statement. Moreover, the plea of the respondent that if the additional written statement is allowed, the entire proceedings

have to be started afresh i.e., from the stage of framing issues, cannot be brushed aside. Hence, the order under challenge warrants no interference.

11) Accordingly, the Civil Revision Petition is dismissed. No costs. Miscellaneous Petitions pending if any in this C.R.P., shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:07.09.2017
GM

