

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3915 of 2017

ORDER:

1) Assailing the order, dated 29.04.2017, passed in I.A.No.218 of 2016 in O.S.No.29 of 2012 on the file of the Principal Junior Civil Judge, Piler, wherein an application filed under Order VI Rule 17 of C.P.C. seeking permission of the Court to amend the plaint was allowed, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

2) The respondents/plaintiffs filed the above suit seeking permanent injunction restraining the defendants, their agents, representatives, assignees or anybody claiming through them from interfering with the peaceful possession and enjoyment of the plaintiffs over the plaint schedule property. Pending the suit, an I.A. came to be filed to amend the boundaries in the plaint schedule properties and to make consequential amendments. In the affidavit filed in support of the petition, it has been stated that due to over sight some mistakes have crept in, and after the report of the advocate-commissioner, the boundaries in the registered settlement deeds and sale deeds were rectified. In view of the same, it is said that the amendment of the boundaries of the plaint schedule property are very much essential.

3) A counter came to be filed by the defendants stating that subsequent to filing of the suit, an advocate-commissioner was

appointed, who filed his report on 26.03.2013, wherein it was mentioned that the boundaries relied upon by the plaintiffs and the boundaries relied upon by the advocate-commissioner are not tallying with the ground position. Hence, the plaintiffs got their sale deeds rectified and filed the present application for amendment of the boundaries. It is further stated that even in the amended plaint, the boundaries in dispute are not tallying with the boundaries reported by the advocate-commissioner in his report. Hence, he submits that the plaintiffs are now trying to interfere with the property of the defendants under the guise of rectification deeds.

4) After considering the rival submissions made, the trial Court allowed amendment of the plaint. Challenging the same, the present Civil Revision Petition is filed.

5) The learned counsel for the petitioner would submit that the defendants would be put to great prejudice if the amendments are allowed, as the plaintiffs are trying to trespass into their land, basing on the rectification deed. Reiterating the averments made in the affidavit filed in support of the I.A., the learned counsel for the respondents/plaintiffs would submit that the order under challenge warrants no interference.

6) It is clear from the record that after filing of the suit, an advocate-commissioner visited the spot and submitted his report, wherein it was found that the boundaries to the suit schedule property as mentioned in the plaint are not tallying with the

ground position. Basing on the report of the advocate-commissioner, the plaintiffs got their sale deeds and settlement deeds rectified before the Sub-Registrar and thereafter filed the present application.

7) In *P.A.Jayalakshmi v. H.Saradha and others*¹, while dealing with Order VI Rule 17 of C.P.C. the Apex Court held that it is the primary duty of the Court to decide as to whether such an amendment is necessary to decide the real dispute between the parties. Only if such a condition is fulfilled, the amendment is to be allowed. However, proviso appended to Order VI Rule 17 of C.P.C. restricts the power of the Court. It puts an embargo on exercise of its jurisdiction. Thus, unless the jurisdictional fact, as envisaged therein, is found to be existing, the Court will have no jurisdiction, to allow the amendment of the plaint.

8) The issue now is whether the request of the plaintiffs for amendment of the boundaries to the plaint schedule properties can be accepted basing on the rectification deeds.

9) As seen from the record, the suit is for bare injunction. Therefore, the respondents/ plaintiffs have to prove whether they are in possession of the plaint schedule property as on the date of filing of the suit. The plea of the plaintiffs is that the defendants therein ie. Petitioner herein and third respondent herein are interfering with their possession over the property mentioned in the plaint. Therefore, any change in boundaries of the property

¹ (2009) 14 SCC 525

or change in dimensions of the property has nothing to do with the intervention of the plaint schedule property. Interference was with regard to property which the plaintiff was in possession as on the date of filing of the suit.

10) Further, it would be useful to refer to the boundaries as mentioned in the plaint, to show as to how the boundaries mentioned in the advocate-commissioner report and rectification deed are not tallying.

Boundaries mentioned in the plaint:

"A. Schedule property:

East : Road

West : P. Ramachandrahshetty & P. Reddeppachetty field

North: Allabakshukhani retaining land

South: P. Bhashakhan land

B Schedule property:

East : Bangaruvalasa Road

West : P. Nagaraja Chetty land

North: Madanapalli Road

South: P. Nagaraja Land

C. Schedule property:

East : Akulavaripalli road

West : P. Ramachandrahshetty & P. Reddeppachetty's land

North: Madanapalli road

South: Pathan Bhashakhan's land

11) Correct schedule of property mentioned in the rectification deed are as under:

Land admeasuring Ac.2.75 cents or 1.1110 hectares in Sy.No.216, Doddipalle Village, Doddipalle Gram Panchayat, Pileru Mandal, Chittoor District, bounded as under:

East : Mekala Yellaiah land

West : Kurva Niranjana Land

North: P. Narsimha Reddy Land

South: Land belongs to Kammari Ramulu

12) In the advocate-commissioner report, no specific boundaries are shown, but it is stated that on the east of 'A' schedule property there is a road leading to Bangaruvalasa where as in the rectification deed the eastern boundary of 'A' schedule property was shown as "Akulavaripalli road". The Commissioner also found that northern boundary of 'B' schedule property is not tallying. It is also stated in the report that the Mandal Surveyor expressed that it is not possible to locate 'C' schedule property as the boundaries are not tallied. Had it been a case of title dispute, there is some meaning in the request made by the plaintiffs for alteration of the plaint schedule property basing on the advocate-commissioner's report and the rectification deed. Since the suit is for injunction, change in boundaries has nothing to do with the relief sought. In view of the above, the order under challenge warrants interference.

13) Accordingly, the Civil Revision Petition is allowed setting aside the order dated 29.04.2017 passed in I.A.No.218 of 2016 in O.S.No.29 of 2012. There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

11.09.2017
gkv