

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.6240 OF 2016

Date:14.02.2017

Between:

The Vijayanagar Colony Railway Staff Co-operative
Housing Society Ltd., rep.by its Chairman, K.C.Mohan
S/o Kanakaiah and two others.

.. Petitioners/petitioners
(plaintiffs)

AND

Pingili Ranadheer Reddy s/o. P.Vijayapal Reddy,
Aged about 57 years, Occu: Business, r/o.H.No. 2-10-289,
Waddepally, Hanamkonda, Warangal and others.

.. Respondents/ respondents
(defendants)



This Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

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ORDER:

Heard Sri M.N.Narasimha Reddy, learned counsel for petitioners and Sri. Narasimha Rao, learned counsel for respondents.

2. Petitioners are the plaintiffs. Petitioners filed O.S.No.497 of 2006 on the file of I Additional Senior Civil Judge, Warangal praying to grant perpetual injunction restraining the defendants and their men from interfering into the peaceful possession and enjoyment of the plaintiffs over the suit schedule property.

3. Petitioners/plaintiffs filed petition under Order XXIII Rule 3 of the Code of Civil Procedure (for short, 'CPC') praying to permit petitioners to withdraw/abandon part of relief of perpetual injunction in respect of Ac.1.31 guntas which was occupied by B.C.Hostel and Ac.0.09 gunats, which was covered by three houses constructed by the members of plaintiff - society and to confine the relief in the suit in respect of Ac.3.20 guntas.

4. The facts to the extent necessary are as under:

The petitioners purchased the land to an extent of Ac.5.20 guntas. Ac.1.20 guntas in Sy.No.47 and Ac.4.00 guntas in Sy.No.48 of Kadipikonda village, Ghanpur Gram Panchayat, Warangal District. Alleging that defendants 1 and 2 removed the bushes, boundary stones and plot numbers and attempted to interfere by dispossessing the plaintiff society from the suit land by removing the boundary stones, the instant suit is filed. During the

pendency of the suit, I.A.No.1111 of 2013 filed by plaintiffs to implead the respondents 3 to 6 therein as defendants 3 to 6 and to amend the pleadings, was ordered on 19.06.2015. Justification given for making the defendants 3 to 6 as parties to the suit was that they claim to have purchased the suit schedule land from defendants 1 and 2 and were trying to change the physical features of the suit schedule property and attempting to dig the trenches in violation of the *status quo* orders granted by the High Court in CRP No.711 of 2010 and trying to raise structures.

4.2. Issues were framed on 05.10.2009. After taking several adjournments, chief-examination affidavit of P.W.1 was filed on 06.02.2013. On 08.03.2013 P.W.1 was examined in-chief and Exs.A1 to A16 were marked. On 04.07.2013, 28.04.2014 and 08.10.2014 P.W.1 was examined. On 25.11.2014 further evidence of plaintiffs were closed. However, by orders in I.A.No.1343 of 2014, further cross-examination of P.W.1 was ordered at the instance of the defendants. Defendants 3 to 6 filed written statement on 16.09.2015. After hearing both sides, issues were re-cast on 29.01.2016. At the request of the petitioners, further chief-examination of the petitioners was allowed on 23.02.2016.

4.3. At this stage, petitioners filed I.A.No.259 of 2016 under Order VI Rule 17 of CPC read with Rule 28 of the Civil Rules of Practice praying to permit the petitioners to amend the plaint and schedule by incorporating relief of mandatory injunction. By the amendment of schedule, petitioners seek to divide the suit schedule property into three separate units with three different descriptions. By way of amendment of prayer, petitioners sought

direction to defendants to remove illegal structures. This is in addition to the relief already sought.

4.4. On detailed consideration of rival claims, trial Court dismissed the I.A. Aggrieved thereby, petitioners filed CRP No.2441 of 2016. This Court dismissed the CRP.

5.1. Learned counsel for petitioners submitted that plaintiffs sought for larger relief. However, having realized that land to an extent of Ac.1.31 guntas and Ac.0.09 guntas respectively are in occupation by the third parties, they decided to give up their claim with reference to the said extent of land and to restrict the prayer in the suit to Ac.3.20 guntas only. He would submit that it is right of the plaintiffs to confine the relief than the larger relief sought in the suit and there cannot be any objection for the defendants when plaintiffs themselves are confining the prayer to a smaller extent.

5.2. He would submit that application under Order VI Rule 17 of CPC is entirely different from the application filed under Order XXIII Rule 1 of CPC and merely because application filed under Order VI Rule 17 is dismissed, cannot be a ground to reject the application filed under Order XXIII Rule 1 of CPC. He, therefore, submitted that learned trial Judge grossly erred in rejecting the application.

5.3. He would further submit that petitioners do not want to lead any further evidence and based on the material on record, they would make their submissions if an opportunity is granted to them, whereas the trial Court is proceeding to decide the suit without giving further opportunity to the plaintiffs.

6. Leaned counsel for respondents strenuously opposed the claim of the petitioners. He would submit that present petition is filed seeking to alter boundaries of the suit schedule property as mentioned in the suit schedule. What petitioners could not achieve directly in the earlier round of litigation are seeking to achieve through this means and the same cannot be permitted. It amounts to abuse of process of Court. Plaintiffs are only trying to drag on the matter by moving one application after other and one CRP after the other. If the petitioners' prayer is allowed, it would change the boundaries of the suit schedule property and would alter the complexion of the case and, therefore, the same cannot be permitted. Merely because plaintiffs/petitioners have the discretion to confine the relief sought in the suit cannot be a ground to allow the present petition when on the similar set of facts earlier application filed for amendment of the schedule property was rejected by the trial Court, as affirmed by this Court.

7. On elaborate consideration of the rival claims, trial Court found that it would be difficult for the Court for identification of Ac.2.00 guntas of land in respect of which suit claim to be withdrawn/abandoned and Ac.3.20 gunats of land, on which the plaintiffs intend to continue the suit for perpetual injunction. Trial Court elaborately assessed the facts on record, legal position and provisions of CPC, in which the earlier application and present applications are filed. Trial Court found that even in the present plan attached to the petition, the portion of land covered by B.C.Boys hostel, is still claimed by the petitioners. The Northern boundary is completely removed in the plan annexed to the

petition. Trial Court also found that separate schedule with specific boundaries in respect of Ac.3.20 guntas and Ac.2.00 gunats, respectively, are not mentioned. Having regard to these discrepancies in the application filed and the fact that it is a long pending suit, trial Court was not inclined to accept the prayer.

8.1. At this stage, it is appropriate to notice the averments made in the affidavit filed in support of I.A.No.259 of 2016 in OS.No.497 of 2016. Paragraph-3 reads as under:

“3. In the meanwhile the Government has abruptly and high handedly occupied an area of Ac.1.31 guntas encroached the land out of Sy.No.48 (land of the plaintiff society) and also constructed rooms for B.C.Hostel. When we are about to take steps against the Government/District Education Officer, Warangal, the respondents/defendants 1 and 2 with their unsocial friends, who have land business, attempted to occupy our remaining land by creating false documents, then immediately the plaintiff society has filed the present suit O.S.No.497 of 2006 on 01.12.2006 and obtained interim orders from interfering in our land and causing any illegal activities on the same. At the time of drafting the plant, we have already informed our counsel that Ac.1.31 guntas was occupied by the B.C.Hostel and made construction and the same was also shown in the map enclosed to the plaint, but unfortunately the said land was not deducted to make specific the property with the respondents which was only Ac.3.20 guntas after deducting/leaving of the existing three houses of our society members who has already constructed their houses much prior to the date of suit. The said fact is noticed by us while thoroughly verifying the plaint and the documents, therefore the schedule and map is required corrections only to the extent of the land available on the date of the suit and subject matter of the suit. So far to the respondents/defendants after deleting the land already encroached/occupied by the B.C.Hostel. Now we have filed the correct schedule as per calculation and the map which is the disputed property.”

8.2. The above extracted averments and the prayers sought and description of properties and boundaries in the schedule filed along with Interlocutory Application, clearly disclose that even at that point of time, petitioners wanted to confine the prayer to Ac.3.20 guntas by recognizing the fact that Ac.1.31 guntas was

encroached by the Government and constructed B.C.Hostel rooms and certain portion is occupied by three persons. While seeking amendment of the schedule, the description of the boundaries were confined to Ac.3.20 guntas. Though did not specifically deal with the remaining extent of land, but clearly described the status of the land in the schedule. It is thus seen from extracted pleadings that even at that point of time, petitioners were conscious of occupation of land by the Government and other three individuals and assert that though their counsel was informed about the same, but erroneously their counsel included the entire Ac.5.20 guntas of land.

9. The affidavit filed in support of the present petition is silent as to why at that stage itself petitioners have not sought for amendment of the prayer in the plaint, as now sought, though petitioners also sought for amendment of prayer for some other relief in addition to changes proposed in the schedule in the above I.A. Thus, it is not a case where this issue was not within the knowledge of the petitioners and that the issue was not considered by the trial Court and this Court. It is deemed that this aspect also fallen for consideration.

10. At this stage, it is useful to extract the paragraphs 5, 8 & 9 of the Order in CRP No.2441 of 2016, which reads as under:

“5. Sri Ramchander Reddy specifically contended that the petitioners sought amendment of suit schedule to reflect correct description of the boundaries in order to avoid further complications at the stage of enforcement of decree. Further, as petitioners are giving up claim on the land occupied by Government to an extent of Ac.1.31 guntas in Sy.No.48, the correct reflection of boundaries is necessary after excluding the land in occupation of Government. Revised suit schedule describes the boundaries of the subject properties by dividing into three

units. Learned counsel also contended that since added defendants were in illegal occupation of the land purchased by the petitioners and undertaking constructions, the additional prayer is sought. The additional prayer is in continuation to the relief already prayed by them in the suit and, therefore, by virtue of amendment sought by the petitioners to the schedule appended to the plaint as well as prayer in the plaint, no prejudice would be caused to the defendants and on the contrary, such amendments are necessary for proper adjudication of the claim. By relying on the decision of this Court in **Kasula Surender Reddy and another v. M.Ravinder Reddy and others**¹, learned counsel contended that liberal approach is required whenever the prayer is sought for amendment of pleadings and prayer and object of the Courts is to decide the rights of the parties and not to punish them for mistakes made in the conduct of their cases.

8. It is appropriate to note that suit was instituted in the year 2006. In spite of directions issued by this Court fixing the time of three months to dispose of the suit as early as in the year 2010, the suit is yet to be disposed of. The frequent filing of the petitions is one of the major reasons for delay in disposal of the suits and long pendency of the cases before the trial Courts. The parties should be aware of their rights and the pleas that can be urged while instituting the civil litigation. Allowing the applications in this manner could only protract the litigation. Quits to the litigation should be given and this kind of dilatory tactics should not be encouraged. Ordinarily amendment of the plaint after commencement of the trial ought not to be allowed except in exceptional circumstances. Even in such cases such plea can be accepted if no prejudice would be caused to other parties. As noticed by the trial Court and referred to above, petitioners have not exercised due diligence and apparently they are playing dilatory tactics to protract the litigation.

9. Having regard to the facts on record, I am of the opinion that if the prayer sought by the petitioners in I.A.No.259 of 2016 is granted, it will be altering the physical features of the suit schedule property and the reliefs prayed. Therefore, it cannot be said that such amendment if allowed would not cause prejudice and would not impair the rights of the defendants 3 to 6. The trial Court has not committed any error in rejecting the I.A. It is a well considered order.”

11. Having regard to these peculiar facts of this case, I see no error in the decision arrived at by the trial Court warranting interference by this Court. Trial Court assigned cogent reasons in support of its decision. The present petition is in disguise aimed

¹ 2016 (1) ALD 437

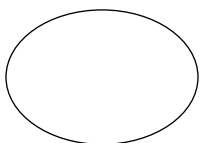
to achieve same objective on the issue where petitioners failed in the earlier attempt. It is not a *bona fide* claim of petitioners.

12. The Civil Revision Petition is accordingly dismissed. There shall be no order as to costs. Miscellaneous petitions if any pending shall stand closed. It is made clear that the observations made herein above are for the purpose of disposal of this revision and there is no expression of opinion on merits in the suit.

JUSTICE P.NAVEEN RAO

Date: 14.02.2017
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HON'BLE SRI JUSTICE P.NAVEEN RAO



CIVIL REVISION PETITION No. 6240 OF 2016

Date: 17.02.2017

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