

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

CRP.(NPD).Nos.3781 & 3782 of 2013

Devaraj

... Petitioner
(in both CRP's)

Versus

Murugesan

... Respondent
(in both CRP's)

Common Prayer: Civil Revision Petitions are filed under Article 227 of the Constitution of India, against the fair and final orders dated 18.06.2013 passed in I.A.Nos.104 & 105 of 2011, in O.S.No.78 of 2004 respectively, by the Additional District Munsif Court, Vaniyambadi, Vellore District

For Petitioner	:	Mr. P.A. Sudesh Kumar
For Respondent	:	No Appearance

COMMON ORDER

सत्यमेव जयते

The instant Civil Revision Petitions have been filed challenging the separate orders dated 18.06.2013 passed by the Additional District Munsif Court, Vaniyambadi, Vellore District in I.A.Nos.104 & 105 of 2011 respectively in O.S.No.78 of 2004.

Brief facts leading to the filing of the revision:

2. The petitioner is the plaintiff in the suit in O.S.No.78 of 2004.

<http://www.judis.nic.in> Pending suit, he filed I.A.No.104 of 2011, seeking amendment of the plaint

and I.A.No.105 of 2011 was filed seeking amendment of the final decree application. Both the applications were filed under Order VI Rule 17 of Civil Procedure Code.

3. The suit was filed for partition. The trial Court passed a preliminary decree on 26.06.2008 in O.S.No.78 of 2004, under which the petitioner as well as the respondent were each allotted half share in the suit schedule property. In the suit, the respondent also filed his written statement and issues were also framed by the trial Court and only thereafter a preliminary decree was passed. After passing of the preliminary decree, the final decree application was filed by the petitioner in I.A.No.9 of 2000 and the trial Court appointed an Advocate Commissioner, to divide the suit schedule property as per the preliminary decree. Since, the Survey number mentioned in the schedule property did not match with the actual Survey number, the Advocate Commissioner was unable to execute the warrant and therefore, he had returned the same to the Court.

4. In such circumstances, the petitioner filed I.A.No.104 of 2011 and I.A.No.105 of 2011 seeking amendment of the plaint as well as amendment of the final decree application respectively. According to the petitioner, by inadvertence, in the suit schedule, the Survey number was wrongly mentioned as S.No.109/18, whereas the correct Survey number is S.No.109/1B.

5. The respondent has filed his counter in I.A.No.104 of 2011 and I.A.No.105 of 2011 and stated that the applications filed by the petitioner is not maintainable. Since the trial has already been completed. The trial Court by separate orders dated 18.06.2013 passed in I.A.No.104 of 2011 and I.A.No.105 of 2011, dismissed both the applications.

6. Aggrieved by the dismissal of both the applications, the instant civil revision petitions have been filed by the plaintiff, who is the petitioner herein.

7. Heard Mr.P.A.Sudesh Kumar, learned counsel appearing for the petitioner. There is no representation on the side of the respondent.

Submissions of the Learned Counsel

8. Learned counsel for the petitioner submitted that there is no dispute that the correct survey number is only S.No.109/1B and not S.No.109/18. The learned counsel drew the attention of the Court to the written statement filed by the respondent before the trial Court, wherein it was admitted by the respondent that the correct survey number in respect of the subject matter of the property in dispute is S.F.No.109/1B. He also referred to Order VI Rule 17 of Civil Procedure Code and submitted that the Court has got powers to allow the amendment application, even after completion of trial, as per proviso to Order VI Rule 17 of Civil Procedure Code. Further, he also drew the attention of the Court to the affidavit filed by the petitioner before the trial Court, seeking amendment and submitted that

the petitioner has categorically stated that only due to inadvertence and a typographical error, there was a discrepancy while mentioning the correct survey number in the suit schedule. Learned counsel for the petitioner has also drew the attention to Section 95 of Indian Evidence Act, 1872 and the illustration contained therein and submitted that with the available description furnished in the existing schedule of the plaint, the property is identifiable and substituting the correct survey number with the incorrect one does not change the identity of the property. Therefore, according to him, the trial Court ought to have allowed the amendment applications.

9. Learned counsel for the petitioner has also relied upon the decision of the Hon'ble Supreme Court in the case of **Niyamat Ali Molla vs. Sonargon Housing Co-operative Society Ltd., and others** reported in **(2007) 13 SCC 421** and stated that when there is an inadvertent mistake which will not cause prejudice to the respondent, an application for amendment can be entertained even after trial. Further, he drew the attention of this Court to paragraph 25 of the said judgment, which reads as follows:

“ 25. It is not a case where the defendants could be said to have been misled. It is now well settled that the pleadings of the parties are to be read in their entirety. They are to be construed liberally and not in a pedantic manner. It is also not a case where by reason of an amendment, one property is being substituted by the other. If the court has the requisite power to make an amendment of the decree, the same would not mean that it had gone beyond the decree or passing any decree. The statements contained in the body of the plaint have sufficiently described the suit lands. Only because some lands in the schedule of the property have been left, the same, by itself, may not be a ground to deprive the respondents from the fruit of the decree. If the appellant herein did to file any written

statement, he did so at its own peril. Admittedly, he examined himself as a witness in the case. He, therefore, was aware of the issues raised in the suit. It is stated that an Advocate Commissioner has also been appointed. We therefore, are of the opinion that only because the JL numbers in the schedule were missing, the same by itself would not be a ground to interfere with the impugned order."

10. Learned counsel for the petitioner would further rely upon another decision of a single judge (M. Srinivasan.J) of this Court in the case of **Mahalingam vs. A.S.Narayanaswamy Iyer and others** reported in **(1996) 1 L.W.443**, who has followed the legal maxim "*Falsa demonstratio non nocet*" which means "*a wrong description of an item in a legal document such as "a Will" will not necessarily void the gift if it can be determined from other facts*" and held that when the property mentioned in the schedule to the Will is clear and identifiable, the wrong description of the survey number and the extent will not affect the outcome of the suit.

Discussion

11. This Court has examined the impugned order. Order VI Rule 17 of Civil Procedure Code reads as follows:

"17. Amendment of pleadings:- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due

diligence, the party could not have raised the matter before the commencement of trial.”

As seen from Order VI Rule 17 of Civil Procedure Code, its proviso enables the Court to entertain an application for amendment, even after trial subject to the satisfaction of the Court. In the instant case, even though the survey number was wrongly mentioned in the suit schedule, the respondent mentioned in paragraph no.3 of his written statement has admitted that the correct survey number is S.F.No.109/1B. Further, with the available particulars contained in the suit schedule, the property is clearly identifiable and the respondent has also not disputed the identity of the subject matter of the suit in his written statement.

12. If there is any dispute relating to the identity of the subject matter of the suit, the respondent would have very well raised the same in his written statement, which he has not done so in the instant case, but he has in fact mentioned the correct survey number viz., S.F.No.109/1B in his written statement. As held by the Hon'ble Supreme Court reported in **(2007) 13 SCC 421** referred to supra, when the missing details in the schedule were due to inadvertence and no prejudice will be caused, if the plaint is amended, incorporating the missing details through amendment application is permissible. In the instant case, only due to inadvertence and typographical error, the petitioner did not furnish the correct survey number in the suit schedule which is also pleaded by him in his affidavit filed in support of the amendment applications.

13. The legal maxim "*Falsa demonstratio non nocet*" is clearly applicable to the instant case. It means "*a wrong description of an item in a legal document such as "a Will" will not necessarily void the gift if it can be determined from other facts*". The said legal maxim is a rule of construction which applies to all written instruments and not to Wills alone, that if, of various terms used to describe a subject matter (whether a person or property), some are sufficient to ascertain the subject matter with certainty but others add a description, which is not true, these other terms are not allowed to vitiate the written instrument.

14. In the instant case, the identity of the property is clear with the available particulars given in the suit schedule even though the survey number was wrongly mentioned. Therefore, applying the latin maxim "*Falsa demonstratio non nocet*" as applied in the decision rendered in the Judgment reported in **(1996) 1 L.W.443**, this Court is of the view that it can also be applied to the facts of the instant case. The objection raised by the respondent for allowing the amendment applications are hypertechnical and has raised the said objection despite the fact that he has not disputed the identity of the property and has also mentioned the correct survey number in his written statement.

15. This Court cannot take a pedantic view while deciding amendment applications. Further, in the instant case, the preliminary decree has also been passed only after contest by the respondent. No appeal has been filed against the preliminary decree and the preliminary decree has

now became final.

16. The trial Court has rejected and dismissed the applications viz., I.A.No.104 of 2011 and I.A.No.105 of 2011 on the ground that:

- a) the applications were filed belatedly.
- b) the petitioner has not stated as to when he came to know about the correct survey number, and
- c) the applications ought to have been filed before completion of trial
- d) without amending the preliminary decree, filing an application to amend the final decree is not maintainable.

17. The respondent in his affidavit filed in support of the amendment applications has stated that he noticed the wrong description of the survey number only after the Advocate Commissioner informed the Court that he was unable to execute the Advocate Commissioner's Warrant due to the wrong survey number mentioned in the suit schedule. As seen from proviso to Order VI Rule 17 of Civil Procedure Code, the Court has got powers to entertain amendment applications even after trial provided sufficient reasons are given. The identity of the property is not altered by allowing the amendment applications. The Hon'ble Supreme Court in the case of **PEETHANI SURYANARAYANA and Another vs. REPAKA VENKATA RAMANA KISHORE** reported in **(2009) 11 Supreme Court Case 308** has held that an amendment application can be entertained even after passing of a final decree provided no prejudice is caused to the opposite party. Even in that case, correction of typographical mistake to the subject matter of the suit was sought for in an amendment application filed under

Order VI Rule 17 of Civil Procedure Code, the Hon'ble Supreme Court allowed the amendment application, as no prejudice is caused to the opposite party. The Hon'ble supreme court held as follows:

“18. There cannot be any doubt whatsoever that the principles of natural justice are required to be complied with. But, in a case of this nature, the same would be an empty formality. The facts are not disputed. The identity of the suit lands has not been changed. It is not a case where, as submitted by Mr. Mahabir Singh, one land is being substituted by another. The fact that Town Survey No.463 is a joint family property is not in dispute. As indicated hereinbefore, it is the same plot which was the subject-matter of sale and only in respect thereof the appellants herein could claim partition. The appellants have also furthermore not been able to show as to how and in what manner they have been prejudiced.”

The instant case is also identical to the facts of the Judgment referred to supra reported in **(2009) 11 Supreme Court Case 308**.

18. In the light of the above observations recorded by this Court and proviso to Order VI Rule 17 of Civil Procedure Code as well as the Judgments of the Hon'ble Supreme Court reported in **(2007) 13 SCC 421**, **(2009) 11 Supreme Court Case 308** and the Judgment of this Court reported in **(1996) 1 L.W.443**, this Court is of the considered opinion that the trial Court ought to have allowed the amendment applications filed by the petitioner. The findings of the trial Court in the impugned order is an erroneous one and it has to be set aside by this Court.

ABDUL QUDDHOSE, J.

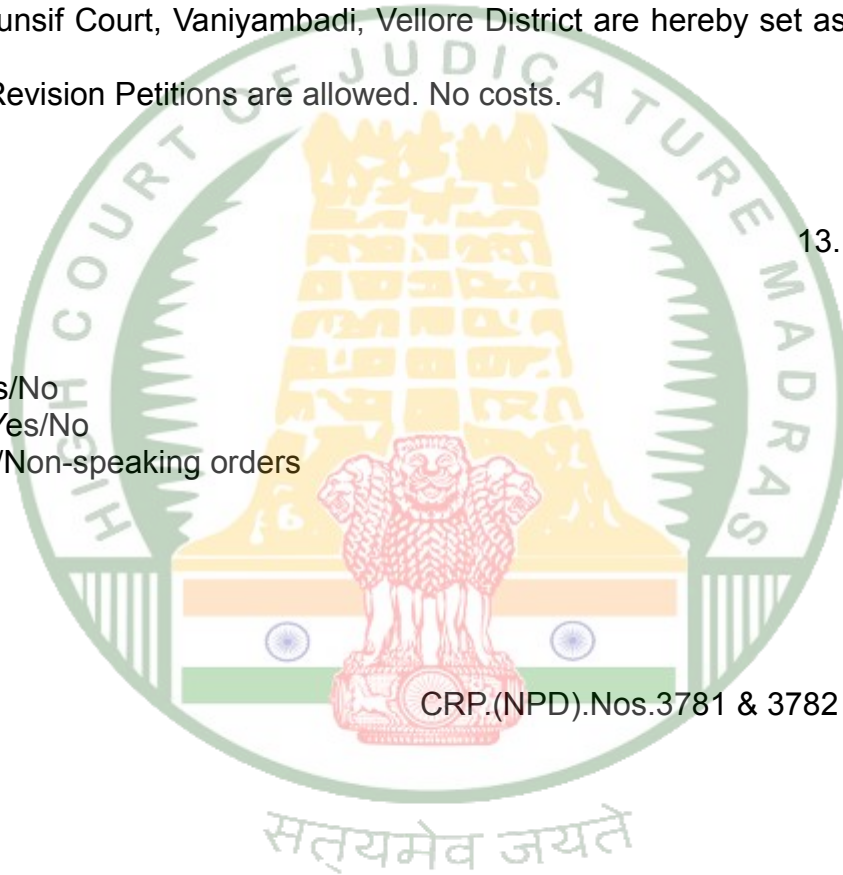
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19. In the result, the orders dated 18.06.2013 passed in I.A.Nos.104 & 105 of 2011, in O.S.No.78 of 2004 on the file of the Additional District Munsif Court, Vaniyambadi, Vellore District are hereby set aside and the Civil Revision Petitions are allowed. No costs.

13.11.2018

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Index: Yes/No
 Internet: Yes/No
 Speaking/Non-speaking orders



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