

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 992 of 2018

ORDER:

1) Aggrieved by the order, dated 27.11.2017, passed in I.A.No.453 of 2017 in O.S.No.110 of 2017 on the file of the Junior Civil Judge, Kothapeta, wherein an application filed under Order VI Rule 17 and Section 151 of C.P.C., seeking amendment of the extent of 366.6 square yards in item No.2 of the plaint schedule property as 233.3 square yards was rejected, the present Civil Revision Petition is filed under Article 227 of the Constitution of India.

2) The petitioner, who is the plaintiff, filed O.S.No.110 of 2017 seeking permanent injunction restraining the respondents/defendants, their men, people and agents from interfering with his peaceful possession and enjoyment of the plaint schedule property. Pending the said suit, the petitioner/plaintiff filed the present I.A. seeking amendment of the plaint. The contents of the affidavit filed in support of the said I.A., would show that the petitioner got the plaint schedule property under a registered partition deed dated 14.03.2013. Two items of properties fell to his share. Item No.2 was to an extent of 233.3 square yards even as per the measurements mentioned in the boundaries of the property, but due to mistake and oversight, in 22nd line in page No.4 of the partition deed, the extent was noted as 366.6 square yards. As such, he noted the extent of item No.2 of the plaint schedule property as 366.6 square yards instead

of 233.3 square yards. Hence, he seeks amendment of the extent of the item No.2 of the schedule property.

3) A counter came to be filed opposing the same. It is stated in the counter that if there was any mistake in the partition deed with regard to the measurements of the schedule property, basing on which the suit is filed, the petitioner has to rectify the mistake in the partition deed. Unless the said document is rectified, the petitioner cannot seek amendment of the plaint.

4) After considering the rival submissions made, the trial Court rejected the request of the petitioner. Challenging the same, the present Civil Revision Petition came to be filed.

5) Reiterating the grounds urged in the petition filed, learned counsel for the petitioner would submit that item No.2 is to an extent of 233 square yards as per the measurements mentioned in the boundaries of the partition deed, but by mistake and due to oversight, in 22nd line in page No.4 of the partition deed, the extent of item No.2 was mentioned as 366.6 square yards, as such the same was carried out in the suit pleadings. According to him, the petitioner got a share only to an extent of 233.3 square yards and since the extent of land is less than the land mentioned in the schedule to the plaint, no prejudice would be caused if the same is allowed. It is further urged that there are no willful latches on the part of the petitioner.

6) On the other hand, learned counsel for the respondents/defendants opposed the same contending that in fitness of the things, it would just and proper if the petitioner gets corrected the extent of land in the partition deed, before seeking amendment in the plaint. If the inconsistency in the said document is continued, it would be very difficult to get the issue resolved and will give scope for litigation in future as well.

7) Before proceeding further it would be appropriate to refer to Order VI Rule 17 of C.P.C., which reads as under:

“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.”

8) While ordering an amendment, the Court has to see whether such amendment is imperative for proper and effective adjudication of the case; whether the amendment sought is a bona fide one or made with a mala fide intention; and whether any prejudice would be caused to the other party which cannot be ultimately compensated in terms of money. The Court must also consider as to whether the amendment if refused, would lead to

injustice or multiple litigation. One more principle to be followed while considering the request for amendment is as to whether it would change the character or nature of the case.

9) As seen from the record, the petitioner/ plaintiff filed the suit for permanent injunction on the strength of the partition deed dated 14.03.2013. It is the plea of the petitioner that the extent of land in item No.2 was wrongly mentioned in the partition deed and the same is sought to be carried out in the pleadings in the suit. As the extent of land mentioned in the body of the partition deed and in the schedule are different, one does not know as to which of the measurement is correct. Since the case is based on the partition deed, it would be just and proper for the petitioner to get the partition deed corrected first before taking steps for amendment of the plaint. In the absence of same, it may not be permissible to get the extent of the land mentioned in item No.2 of the plaint schedule property corrected. Having regard to the facts and circumstances of the case, I do not find any illegality or irregularity in the order passed by the trial Court.

10) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

15.06.2018
gkv

