

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NO.1837 OF 2018

Date: 14.09.2018

Between:

Dussa Anjaneyulu S/o. Laxmaiah, Aged about 42 years,
Occu: Business, R/o. Palakurthy village and mandal,
Jangaon District.

..... Petitioner/respondent/
Defendant

and

Dudekula Saheb @ Shabuddin s/o. late Raj Mohammed
Aged about 81 years, occu: Agriculture, r/o. Palakurthy
Village and Mandal, Jangaon district.

.....Respondent/petitioner/
Plaintiff



The Court made the following:

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ORDER:

Heard learned counsel Sri J.Kanakaiah for petitioner/defendant and Sri K.Raghuveer Reddy for respondent/plaintiff. Parties are referred to as arrayed in O.S.No.246 of 2011 on the file of Principal Junior Civil Judge at Jangaon.

2. Plaintiff instituted the suit to grant decree of perpetual injunction restraining the defendant from entering or otherwise interfering with the peaceful possession and enjoyment of plaintiff over the suit schedule land. In the schedule appended to the suit, while mentioning the extent of land as Ac.0.02 gts., and describing the boundaries, plaintiff also enclosed rough sketch describing the suit schedule property in red colour and other extent of land, which plaintiff claimed as belonging to him in blue colour. Plaintiff filed I.A.No.158 of 2017 praying the Court to permit him to amend the plaint by substituting the old map with a new map. By this I.A., plaintiff seeks to claim total extent of land against which suit is instituted is not 168 square yards, but it is 242 square yards and due to clerical mistake wrong extent of land is mentioned. It is further averred that the disputed land is abutting the road on the Northern side, whereas in the map enclosed to the suit this was not reflected.

3. The said claim of plaintiff was opposed and contended that it was intending to drag on the matter.

4. On hearing rival contentions, trial Court observing that by allowing the petition no prejudice would be caused to defendant and to avoid multiplicity of litigation and to determine the real question in controversy between the parties, Court was inclined to give one more fair opportunity to the plaintiff and accordingly allowed the I.A.

5. According to learned counsel for defendant, in the original suit along with schedule and the map enclosed to the suit, the plaintiff confined the claim to 168 square yards and as per original sketch filed in the suit, the disputed land was not abutting 100 feet wide road on the Northern side. By changing the extent of land and boundaries to the property, plaintiff is trying to disturb the possession of defendant abutting 100 feet wide road. He would further submit that as claim now made would be amounting to altering the nature and scope of the suit, the same is not permissible and the trial Court erred in granting the relief. He would submit that suit was instituted in the year 2011, whereas this application is filed after six years and the claim made is not *bona fide*. He would submit that it does not amount to clerical error to permit such relief.

6. *Per contra*, according to learned counsel for plaintiff, it was a *bona fide* clerical mistake in describing the extent of property and the boundaries. He would submit that though in the schedule it was described that on the Northern side, there is 100 feet wide road, but in the sketch drawn erroneously gap was created. He would further submit that in the schedule as well as in paragraph-6 of the plaint, the extent of land was mentioned as Ac.0.02 guntas

and Ac.0.02 guntas come to 242 square yards, whereas erroneously total extent was mentioned as 168 square yards. Therefore, by this application, plaintiff intends to correct the mistake. By said correction, nature of the suit and cause of action does not change, and it would only be aiding the Court to decide the real controversy in issue. In the suit, trial is yet to commence and therefore, merely because application is filed after six years, it cannot be thrown out on that ground.

7. In support of his contentions, learned counsel for plaintiff placed reliance on the following decisions:

- i) **Sajjan Kumar v. Ram Kishan**¹;
- ii) **Surender Kumar Sharma v. Makhan Singh**² and
- iii) **Kasula Surender Reddy and another v. M.Ravinder Reddy and others**³

8. Suit is to grant decree of perpetual injunction against defendant. Two primary ingredients to grant injunction are, 1) *prima facie* title to the property and 2) possession as on the date of institution of the suit. According to plaint averments read with schedule, on the date of institution of the suit, defendant was trying to interfere and dispossess plaintiff from land to an extent of 168 square yards in Sy.Nos.491/A, 491/E and 491/A/1 with boundaries as specified in sketch map marked in red colour. This piece of land is part of larger extent of land owned by plaintiff in Sy.No.491.

9. It is pertinent to note from the reading of rough sketch copy of original produced by the counsel for defendant, there is a gap

¹ (2005) 13 SCC 89

² (2009) 10 SCC 626

³ 2016 (1) ALD 437

between 100 feet wide road on the Northern side and the red marked portion, which is suit schedule land and plaintiff claimed the same as part of larger extent of land owned by him abutting the red marked portion on three sides. By this amendment, he is not only seeking to enlarge the extent of land, which according to plaintiff, defendant is trying to encroach and dispossess the plaintiff, but the sketch showing the size and dimensions of disputed plot are also changed and now reflected as abutting 100 feet wide road. In other words, petitioner is enlarging the boundaries of the suit schedule property.

10. As noted above, in a suit for injunction, the primary requirement is possession by the plaintiff by the time suit was instituted. Allowing the petition would result in determining issue of possession on additional extent of suit schedule property retrospectively. Further, if according to plaintiff, he is in possession of remaining extent of land, nothing prevented him from taking appropriate legal proceedings against alleged attempt to encroach that portion of land.

11. In two decisions of Supreme Court relied by the learned counsel for plaintiff, though issue considered was with reference to petition to amend the schedule, but in both suits, prayer sought was to grant decree of eviction of tenant. The prayer to amend the schedule was opposed contending that it was belated. Supreme Court held that it would not amount to change in the nature and character of the suit as suit was filed for eviction against tenants.

12. In the decision of this Court, the amendment proposed was on describing the village in which concerned survey numbers are

situated. It appears, initially plaintiff mentioned the concerned survey numbers as belong to Mohammed Nagar village, whereas actually those survey numbers belong to Kandukur village. Having regard to the nature of claim and the mistake in describing the village, this Court held that petition to amend the schedule was validly granted by trial Court.

13. In the facts of this case, the said decisions do not come to the aid of plaintiff.

14. It is no doubt true that wide discretion is vested in the trial Court under Order VI Rule 17 of CPC to permit amendment of pleadings at any stage of proceedings and to avoid multiplicity of litigation trial Court may permit amendment of pleadings, but the trial Court is required to exercise the discretion having regard to the facts of a given case. The Court should be slow in granting relief of amendment of sketch in an application moved after long lapse of time, more particularly in a suit for injunction.

15. It relevant to note that while showing the extent of land plaintiff mentioned only 168 square yards. Further trial court ought to have noted that boundaries prevail over the extent and boundaries were identified in red colour and plaintiff intend to change the boundaries to match with his claim of larger extent. Though, ordinarily High Court do not interfere in the discretion exercised by trial court, in the facts of this case, trial Court erred in granting the relief prayed by the plaintiff as it would change the extent of suit property, boundaries and location of the property on a claim for injunction against defendant after six years of institution of the suit. Merely because trial has not commenced is

no ground to allow such application. Civil Revision Petition is accordingly allowed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

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