

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.2108 of 2018

ORDER:

This Civil Revision Petition is filed by the petitioner/plaintiff No.3 aggrieved by the order dated 04.01.2018 in I.A.No.1060 of 2017 in O.S.No.40 of 2009 passed by the learned Senior Civil Judge, Nalgonda dismissing the application filed by himself and two others i.e plaintiff Nos.1 and 2 under Order VI Rule 17 C.P.C seeking permission to amend item No.2 of the plaint schedule lands covered by Survey No.125/E of Vattimarthy Village, Chityal Mandal, Nalgonda District.

2) The submission of petitioner/plaintiff No.3 before the trial Court was that the southern boundary of the subject land was mentioned as “Land of Narra Narayana Reddy & Brothers part of land in Sy. No.124/A” and the western boundary was mentioned as “Land of Narra Narayana Reddy & Brothers part of land in Sy.No.124/A”. As there was a typographical mistake in the description of both the boundaries, amendment was sought for to the effect that the southern boundary may be mentioned as “Land of Narra Narayana Reddy and brothers part of land” and the western boundary as “Land of Chinna Narsi Reddy and Narra Narayana Reddy and brothers” in the place of the existing boundaries.

3) The 1st respondent/defendant opposed the petition contending that it was a belated petition filed at the fag end of the trial and that earlier also petitioner/plaintiff No.3 and other plaintiffs filed I.A.No.250 of 2009 and I.A.No.1040 of 2009 for amendment of the boundaries with respect to item No.2 covered by Survey No.125/E;

those amendments were ordered and were also carried out; the present boundaries are nothing but amended boundaries; and therefore, they cannot be further amended as per the wish of the petitioner-plaintiff No.3.

4) The trial Court considered the objections of the 1st respondent/defendant and dismissed the I.A.

Hence the instant C.R.P.

5) Heard arguments of Sri A.Vishnu Vardhana Reddy, learned counsel for petitioner and Sri M.Bhushan Reddy, learned counsel for 1st respondent. Respondent Nos.2 to 4 are not necessary parties vide Cause Title.

6) The submission of learned counsel for petitioner/plaintiff No.3 is that it is true that, as per the orders in I.A.No.250 of 2009 and I.A.No.1040 of 2009, earlier also the plaint schedule was amended. However, at that time, the mistake in the description of the western and southern boundaries could not be detected and therefore, a wrong amendment was made in respect of southern and western boundaries of item No.2 of the plaint schedule lands. If the said mistake were to be allowed to be continued, it would prejudice the interest of the petitioner/plaintiff No.3 in the sense, it would be difficult for the petitioner/plaintiff No.3 to secure delivery of the property, in case the suit is decreed. On this ground, the petitioner-plaintiff No.3 sought to allow the Civil Revision Petition.

7) Learned counsel for 1st respondent/defendant vehemently opposed the revision on the ground that earlier the plaint schedule was amended twice and the plaintiffs allowed these boundaries to

continue till the suit reached the final stage of trial and now the present revision is filed only to procrastinate the matter.

8) The point for determination is:

“Whether there are merits in this petition to allow?”

9) **POINT:** Order VI Rule 17 C.P.C governs amendment of pleadings. It reads thus:

“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.”

It has to be noted that after amendment of Order VI Rule 17 C.P.C, by virtue of Act 46 of 1999 and Act 22 of 2002, a proviso has been added stipulating 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 commencement of the trial. Whether the party, who seeks amendment after commencement of trial has indeed applied due diligence or not is a matter of fact.

10) In the instant case, admittedly, the plaint schedule was amended twice by virtue of the orders in I.A.No.250 of 2009 and I.A.No.1040 of 2009 and the amended plaint schedule is being continued till date i.e the final stage of trial. At this stage, the submission of the petitioner/plaintiff No.3 is that there is an error in the description of western and southern boundaries of item No.2

covered by Survey No.125/E. The reason for not amending the two boundaries suitably during the earlier amendment is that at that time, the petitioner/plaintiff No.3 could not know the correct particulars of the boundaries of western and southern sides and that was why the error was crept in.

11) It is seen that the present suit is the one for declaration of title and recovery of possession. In that context, the submission of the petitioner/plaintiff No.3 that if the boundaries are not suitably amended, difficulty may arise at the time of execution in case the suit were to be decreed, is a well founded one. It is also submitted by the petitioner/ plaintiff No.3 that but for the error in the description of western and southern boundaries, there is no identity dispute so far as item No.2 of the plaint schedule lands is concerned.

12) In that view of the matter, though delay was caused in preferring the application for amendment, this Court in the interest of justice considers it expedient to permit the petitioner/plaintiff No.3 to suitably amend the plaint schedule as prayed for. However, since the delay is an enormous one and it is an amendment after two amendments, such amendment shall be allowed only on imposition of heavy costs.

13) In the result, the Civil Revision Petition is allowed by setting aside the impugned order dated 04.01.2018 in I.A.No.1060 of 2017 in O.S.No.40 of 2009 on the file of Senior Civil Judge, Nalgonda. Consequently, the I.A. is allowed permitting the petitioner/plaintiff No.3 to amend the plaint schedule as prayed for on his paying costs of Rs.3,000/-(Rupees Three Thousand Only) to the 1st respondent/ defendant on or before 25.07.2018. The trial Court, after amending

the plaint, shall make every endeavour to complete the trial and dispose of the suit on merits at the earliest not later than three(3) months from the date of receipt of a copy of this order. In default of payment of costs by the petitioner/plaintiff No.3, this order shall be deemed to be cancelled and the trial Court shall proceed with the trial. There shall be no order as to costs.

As a sequel, the miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 13th July, 2018.

Note: Issue C.C by 16.07.2018.
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THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO



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Date: 13.07.2018

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