

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.2676 of 2018

ORDER:

Aggrieved by the dismissal of an application for amendment under Order VI Rule 17 of the Code of Civil Procedure, 1908, the plaintiff in a suit for partition has come up with the above revision.

2. Heard Smt. Nimmagadda Revathi, learned counsel for the petitioner and Mr. D. Anil Kumar, learned counsel for the respondents.

3. The petitioner herein filed a suit in O.S.No.7 of 2011 on the file of XI Additional District Judge, Krishna, at Gudivada, seeking partition of a land bearing Plot No.8 into 6 equal shares and to allot 4 out of those 6 shares to the plaintiff. The petitioner also sought a decree of permanent injunction restraining the defendants from demolishing the existing shed in the plaintiff schedule property.

4. Unfortunately at the time when the suit was filed, the petitioner/ plaintiff did not give a description of the property with its boundaries. The petitioner merely annexed a plaintiff plan, which, itself, was stated to be the suit property. At least if the Examiner had applied his mind, the plaintiff would have been returned directing the plaintiff to give a proper description of the suit property. But it was not done.

5. Therefore, the learned counsel for the plaintiff, realising the mistake at the time of trial, filed an application in I.A.No.1719 of 2017 for amendment. But the said application was dismissed by the trial Court on the sole ground that the names of the owners of the

properties on the four boundaries are not noted and that therefore, the application for amendment cannot be allowed at the time of trial after 6 ½ years of the institution of the suit. Therefore, the plaintiff has come up with the above revision.

6. But I do not think that the trial Court was right in rejecting the application for amendment. The suit is one for partition. The only property, which is the subject matter of the suit, is Plot No.8. Unfortunately, in stead of describing the plot with survey numbers, extent and boundaries, the plaintiff merely filed a plan along with the plaint. Somehow the suit also got numbered. If the Examiner had applied his mind (despite the non-application of mind on the part of the learned counsel for the plaintiff), he would have insisted that the schedule to the plaint should contain a description of the property and not a mere plan. Order VII Rule 3 CPC goes further to say that in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint should specify such boundaries or numbers. This rule was not satisfied by the plaint as it was originally presented. Therefore, the Court itself ought to have returned the plaint.

7. It is in the above circumstances, that the plaintiff sought amendment of the plaint, just to incorporate the description of the property in the schedule. By the amendment, the nature of the relief claimed in the suit was not altered. The amendment was not on the basis of any new cause of action. Order VI Rule 17 makes it mandatory to allow all such amendments as are necessary for the purpose of determining the real questions in controversy between

the parties. When the subject matter of the property was not changed, when the relief claimed in the suit did not undergo any change and when the amendment sought was not on any new cause of action, the trial Court could not have dismissed the application for amendment.

Hence, the Civil Revision Petition is allowed, the impugned order is set aside and the application for amendment is allowed. The Court below shall give an opportunity to the petitioner to carry out the amendment by fixing a time for the same and proceed further in the matter in accordance with law.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 15-06-2018

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