

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.5112 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 31.08.2017 passed in I.A.No.363 of 2017 in O.S.No.170 of 2014 on the file of the Court of I Additional Junior Civil Judge, Chittoor.

2. Heard the learned counsel for both parties.

3. The facts leading to filing of the present revision are briefly as follows:

The respondents filed O.S.No.170 of 2014 against the petitioners for declaration, consequential mandatory and perpetual injunction in respect of plaint 'A' and 'B' schedule properties. During pendency of the suit, the respondents filed I.A.No.363 of 2017, under Order VI Rule 17 C.P.C., for amendment of the plaint to alter the survey number in schedule 'A' and include Ac.1.00 cents in Survey No.197. The petitioners filed counter opposing the amendment of the plaint. The trial Court, after considering the material available on record, allowed the petition. Hence, the revision.

4. The point that arises for consideration is:

"Whether there is any illegality, irregularity or impropriety in the impugned order?"

5. There is no dispute between the parties with regard to plaint 'B' schedule property. The respondents filed I.A.No.363 of 2017 for amendment of the plaint so far as 'A' schedule property is

concerned. Originally the total extent of the plaint 'A' schedule property is Ac.0.10 cents in Survey No.22/4 with specific boundaries. In the plaint, the survey number is mentioned as 22/4 in 'A' schedule. In paragraph No.4 of the plaint, 'A' schedule survey number is mentioned as 24/4. It appears that there is some typographical mistake in plaint 'A' schedule so far as the survey number is concerned. Due to oversight, the respondents have not noticed the mistake crept in plaint 'A' schedule so far as the survey number is concerned. If the petition is not allowed, it may not be possible for the respondents to substantiate their case.

6. Learned counsel for both parties, in one voice, submitted that so far the trial has not commenced in the suit. While passing the orders in the petition filed under Order VI Rule 17 C.P.C., before commencement of the trial, the approach of the Court shall be liberal. As rightly pointed out by the learned counsel for the respondents, it is only a typographical mistake.

7. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to allow the amendment so far as the survey number in plaint 'A' schedule as 24/4 instead of 22/4 in the interest of both parties.

8. The respondents are also seeking for amendment to include Ac.1.00 cents in Survey No.197 in plaint 'A' schedule. There is no mention in the plaint that there is a cart track in Survey No.197. For the first time, the respondents have taken a plea that cart track is situated in Survey No.197. As per the averments made in the petition, the land in Survey No.197 belongs to Government. The description of the property i.e., an extent of Ac.1.00 cents in

Survey No.197 is shown as Vooragutta poramboke. Admittedly the property in Survey No.197 belongs to the Government and not to the respondents. If the petition is allowed, certainly it will change the nature of the suit. The respondents are not entitled to seek the declaration in respect of Government land. Without taking a specific plea in the plaint about survey number or the extent of land, the respondents are not entitled to seek the amendment of plaint to include an extent of Ac.1.00 cents in Survey No.197, which is admittedly belongs to the Government. The trial Court has not considered this aspect and simply allowed the petition as if it would not cause any prejudice to the petitioners. The trial Court has not considered the scope of Order VI Rule 17 C.P.C. so far as Survey No.197 is concerned. The impugned order passed by the trial Court permitting the respondents to include an extent of Ac.1.00 cents in Survey No.197 in plaint 'A' schedule is not sustainable and liable to be set aside.

9. In the result, the Civil Revision Petition is allowed in part, setting aside the order dated 31.08.2017 passed in I.A.No.363 of 2017 in O.S.No.170 of 2014 on the file of the Court of I Additional Junior Civil Judge, Chittoor, permitting the respondents to amend the plaint to include an extent of Ac.1.00 cents in Survey No.197 in plaint 'A' schedule. The rest of the order is confirmed. There shall be no order as to costs.

10. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 27.11.2018

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