

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION No.5694 of 2018

ORDER : (Oral)

Vide the present petition, the petitioners have challenged the order dated 16th July 2018, passed in I.A.No.151 of 2018 in O.S.No.261 of 2014, whereby, the application filed under Order 6 Rule 17 of CPC to permit the respondent herein/defendant to amend the written statement in Para Nos.7 and 9 as 'T.S.No.1570' instead of 'T.S.No.1704 (P)' and delete the word 'Part' in D.No.32/D(part) in Para Nos.7 and 9 and amend 'Ac.1.40 cents' instead of 'Ac.1.29 cents' in Page No.3 in 9th line and also last line in page No.3, and page No.4, and consequently amend the written statement, has been allowed.

2. Learned counsel appearing on behalf of petitioners submits that the trial in O.S.No.261 of 2014 is commenced and PW-1 has already been examined. Thereafter, the respondent/defendant filed I.A.No.151 of 2018 for amendment of the written statement. Therefore, as the trial in the suit is commenced, amendment cannot be allowed.

3. It is not in dispute that after commencement of trial, the amendment cannot be allowed unless the Court is satisfied that the amendment is necessary to adjudicate the suit. The petitioners/plaintiffs herein have purchased an extent of 290 square yards of vacant site situated in D.No.32/D of Nallapadu village, which is within the limits of Guntur Municipal Corporation. Out of the said 290 square yards, the petitioner No.1 gifted 167.5 square yards of site to petitioner No.2 herein

and both are in possession and enjoyment of the same. The petitioners/plaintiffs, for grant of approval for making construction of house in the suit schedule property, made an application before the respondent and the same was rejected. Therefore, the petitioners approached this Court. This Court issued plan to the suit schedule property, but the respondent/defendant did not choose to issue the plan for constructing the house. However, the respondent/defendant proceeded with construction of wall around the suit schedule property.

4. As per the petitioners/plaintiffs, the vacant site of 290 square yards is situated in T.S.No.1570 of Block No.19 and Ward No.18. But the respondent/defendant filed the petition contending that the actual survey number for the land in D.No.32/D (part) in T.S.No.1704 (P) of Block No.19 and Ward No.18 is 1570. Originally, the land is in D.Nos.32/D and 32/C. The land in D.Nos.26/D2 and 26/C2 of Nallapadu village was acquired by the respondent/defendant/Guntur Municipal Corporation under Award Nos.5/68 and 6/69. As per the petitioners/plaintiffs, the suit schedule property is an extent of 290 square yards in Item Nos.1 and 2 of the suit schedule property situated in Ward No.18, Block No.19, T.S.No.1570. Even as per the plaintiffs, the said survey number is T.S.No.1570. Accordingly, the respondent/defendant intended to amend the written statement only in respect of the present suit.

5. It is not in dispute that though the last lines of written statement filed by the respondent/defendant is in respect of T.S.No.1570 and D.No.32/D, however, T.S.No.1704 (P) was wrongly mentioned by him.

After taking into account all the survey numbers as per the survey reports, it is clear that an extent of Ac.1.40 cents in D.No.32/D, is situated in T.S.No.1703/2 and 1570. Accordingly, the learned trial Court has rightly allowed to change the survey number as T.S.No.1570 instead of 1704 (P).

6. In addition to above, even as per the petitioners/plaintiffs, the said survey number is 1570. They also made an application before the Municipal Corporation for construction in respect of the same survey number. Admittedly, the dispute is also in the same survey number 1570.

7. In view of above, I find no illegality or perversity in the order passed by the trial Court.

8. Finding no merit in the present revision petition, the same is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

5th October, 2018

ajr