

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition no.5844 of 2018

ORDER:

The unsuccessful plaintiff/petitioner filed this revision, under Article 227 of the Constitution of India, assailing the order and decretal order, dated 16.08.2018, of the learned III Additional Junior Civil Judge, Nellore, SPSR Nellore District, passed in I.A.no.482 of 2018 in O.S.no.114 of 2013.

2. I have heard the submissions of the learned counsel appearing for the petitioner/plaintiff ('plaintiff', for brevity) and of the learned counsel appearing for the respondents/defendants ('defendants', for brevity). I have perused the material record.

3. The facts, which are necessary to be stated as a preface to this order, are as follows:

The plaintiff instituted the suit for perpetual injunction in respect of a wet land of an extent of Ac.1.92 cents in Patta no.280, Survey no.1332/1 of Tirumalammalem Gram Panchayat, Epuru Bit II village of Venkatachalam Mandal. The 1st defendant filed a written statement resisting the suit. After the plaintiff appeared as a first witness/PW1 and was examined in chief, he filed the instant application for amendment of the plaint schedule. By the order impugned, the trial Court dismissed the said petition.

4. The case of the plaintiff in support of the request for amendment of the schedule of the plaint, in brief, is as follows: "The boundaries shown in the plaint schedule and exhibit A1, original settlement deed, dated 11.10.2012, are incorrect. The Commissioner appointed by the Court visited the properties

and filed a report. The boundaries of the property on the West & North that are mentioned in the Commissioner's report and in examination in chief of PW1 are the correct/actual boundaries. But the boundaries are wrongly mentioned in exhibit A1. Hence, the plaintiff obtained rectification deed. The same was marked as exhibit A11. Hence, the present petition is filed for amendment of the plaint schedule with regard to the boundaries on West and North as follows: 'West: Irrigation Channel instead of land of Yerrati Masthanaiah; North: Road leading to Gajulapalli village instead of Bata leading to Epuru Venkata Sesha Reddy lands'.

5. The case of the defendants, in brief, is this: The suit is filed for perpetual injunction. It is specifically averred in the plaint that by the time of institution of the suit, there is a paddy crop in the plaint schedule property and that the defendants are highhandedly trespassing into the property. The defendants filed an application for appointment of a Commissioner to bring to the notice of the Court the true facts and the physical features. A request was also made to direct the Commissioner to measure the properties of both the parties based on the FMB (Field Measurement Book). The plaintiff filed a counter and requested for measurement of the properties based on the registered sale deed. The trial Court appointed a Commissioner and directed to measure the land based on FMB and fix the boundaries with the assistance of a Mandal Surveyor. The Surveyor issued a notice intimating about his visit and requiring both the parties to be present at the time of inspection of the suit schedule property by the Advocate Commissioner. At that time, it was noticed that the plaintiff encroached upon some extent of land belonging to the defendants and that there is variance in the boundaries of the property from

the plaint schedule property on the Western and Northern sides. The interim injunction orders were made absolute by the trial Court. The appeal preferred by the defendants in CMA no.9 of 2014 was allowed by the appellate Court. When the defendants tried to raise a ridge on the Western side boundary of the defendant's property, the plaintiff highhandedly did not allow the defendants to do so. At that juncture, the defendants filed O.S.no.487 of 2014 on the file of the Court of the learned Principal Junior Civil Judge, Nellore, seeking declaration and injunction. They also filed an application for temporary injunction. The plaintiff herein filed a counter in the said application. The said Court was pleased to grant temporary injunction. The appeal preferred by the plaintiff in C.M.A.no.3 of 2016 was dismissed by the learned IV Additional District Judge, Nellore. The plaintiff did not seek amendment of the boundaries of the plaint schedule before filing his affidavit in lieu of examination in chief or after filing of the report of the Advocate Commissioner. The plaintiff was cross-examined and he admitted that the boundaries mentioned in the plaint schedule are not correct. He also stated that he does not know the facts of the case. After completion of evidence, the trial Court directed the defendants in this suit to submit their arguments at the first instance as they filed O.S.no.487 of 2014, which is a comprehensive suit for the relief of declaration of title and perpetual injunction. Hence, the counsel for the defendants made submissions at length and brought crucial points to the notice of the trial Court in respect of the boundaries. The inspection of the properties by the Advocate Commissioner along with the Mandal Surveyor disclosed the falsity of the case of the plaintiff that the land of the plaintiff was encroached by the defendants; and, on the other hand, it came to light that the plaintiff encroached the property of the defendants. Hence,

the defendants filed another suit for safeguarding their ownership over the land, which they are enjoying since 1954, that is, from the date of purchase of the land by the father of the defendants. The father of the defendants purchased an extent of Ac.1.68 cents comprised in Sy.no.13332/2; whereas, the father of the plaintiff purchased land in Sy.no.1332/1 in the year 1959, which is of an extent of Ac.1.92 cents as per the registered sale deed; whereas, as per the FMB, the extent of Sy.no.1332/1 is Ac.1.74 cents only. The said fact is mentioned in the written statement of the defendants. The plaintiff now came forward to amend the boundaries to cover the remaining extent of Ac.0.18 cents, which is part of the land of the defendants, which was encroached after obtaining the injunction order and which was made absolute. The said fact was noticed at the time of inspection of the Advocate Commissioner. Now, the plaintiff is intending to change the boundaries but not the extents. By the rectification deed, the plaintiff rectified the boundaries but not the extents. FMB is an authenticated document. The boundaries mentioned in the registered sale deed obtained by the father of the plaintiff and the settlement deed are one and the same; and, since then the plaintiff's family is enjoying the plaintiff schedule property since 1959 and till filing of the suit, is the admission made by the plaintiff. The plaintiff now wants to amend the plaint contrary to the admission made by him in the cross-examination to make a wrongful gain. The amendment changes the entire plaint pleadings and the original cause of action and introduces a new cause of action and affects the rights of the defendants. The plaintiff filed affidavit in lieu of examination in chief with the boundaries, which are at variance from the plaintiff schedule. He did so without amending the schedule of the plaint. Once the documents are marked and the plaintiff is cross-examined by the counsel for the defendants and the defects in

the case of the plaintiff are elicited, the rectification deed has no sanctity. Hence, the petition may be dismissed.’

6. I have given earnest consideration to the facts & submissions. I have gone through the pleadings and the order impugned.

7. Learned counsel for the plaintiff contended that the trial Court did not consider the application for amendment on its merit and simply dismissed it on the sole ground that the same has been filed after the commencement of the trial, though there are a catena of decisions that an application for amendment can be considered at any stage, if the facts of the case warrant such consideration. He also placed reliance on some decisions in this regard in support of the contention that an amendment can be permitted at any stage of the suit, if the facts of the case warrant allowing of an amendment. He further contended that even a change of the relief claimed shall not be considered as a change in the cause of action or the nature of the suit and that power to permit amendments of pleadings should be exercised in the larger interests of doing full & complete justice between the parties. Per contra, learned counsel for the defendants contended as follows: ‘In the plaint schedule, the boundaries are mentioned as per the documents of the plaintiff, even according to the case of the plaintiff. The Commissioner appointed has noted that the Western & Northern boundaries of the plaint schedule are wrongly noted. The plaintiff without seeking amendment of the schedule of the plaint mentioned the boundaries on the West & North of the plaint schedule, which are noticed, at the time of inspection of the Commissioner. The plaintiff, though aware of the Commissioner’s report, did not seek amendment promptly and with due diligence. Though the plaint schedule is not amended, the plaintiff mentioned

totally different Northern & Western boundaries of the plaint schedule in his evidence knowing fully well that the said boundaries mentioned by him in his evidence are at variance with the boundaries mentioned in the plaint schedule. The theory of incorrect mention of the boundaries in the documents of the plaintiff and the obtainment of the rectification deed with regard to the boundaries on the North & West without rectification of the extent of the property is introduced to knock away Ac.0.18 cents of land of the defendants. Only to claim more extent than what is mentioned in FMB in respect of Sy.no.1332/1, the plaintiff is seeking amendment of the boundaries of the schedule of the plaint on the North & West. If the amendment is permitted, it displaces the defence taken and sets at naught the evidence adduced and causes irretrievable prejudice to the defendants.

8. From the facts & submissions, it is discernable that the properties of the plaintiff and the defendants are adjacent to each other. The plaintiff instituted the suit for perpetual injunction in respect of Ac.1.92 cents of wet land in Sy.no.1332/1. Admittedly, the Western & Northern boundaries mentioned in the schedule of the plaint as well as exhibit A1 being relied upon by the plaintiff are incorrect. After his examination in chief, the plaintiff obtained a rectification deed and it is marked as exhibit A11. The plaintiff already mentioned in his evidence, the boundaries on the West and North as mentioned in the rectification deed. The said boundaries are at variance with the boundaries in the schedule of the plaint. The plaintiff is now seeking amendment of the plaint schedule to substitute the incorrect Western & Northern boundaries of the plaint schedule with the correct boundaries. Admittedly, at the instance of the defendants, a Commissioner was appointed

and he inspected the lands along with a Mandal Surveyor and measured the properties of both parties as per the FMB. The defendants also filed a suit O.S.no.484 of 2014 in respect of their property of an extent of Ac.1.68 cents which was said to have been purchased by their father in the year 1954. The defendants' property is admittedly in Sy.no.1332/2; whereas, the property of the plaintiff even as per the details furnished in the schedule of the plaint is admittedly in Sy.no.1332/1. The plaintiff contends that the extent of his property is Ac.1.92 cents; whereas, the defendants contend that the extent of property of the plaintiff cannot be more than Ac.1.74 cents and that the said fact is also evident from FMB, which discloses that the extent of Sy.no.1332/1 is Ac.1.74 cents. Even the boundaries mentioned in the registered sale deed obtained by the father of the plaintiff and the boundaries mentioned in the settlement deed are the same as are mentioned in the plaint schedule. Now, according to the plaintiff, he obtained a rectification deed insofar as the boundaries on the North & West stating that the boundaries are not correctly mentioned in the originally obtained document. As rightly pointed out, the rectification deed does not reflect any change in the extent of the property though there is a change in the boundaries on the North & West by means of rectification. The defendants now contend that the plaintiff came forward with the plea of the incorrect mention of the boundaries in the original deed and the obtainment of the rectification deed only to cover the remaining Ac.0.18 cents, which is the property of the defendants and that if the plaint schedule boundaries are permitted to be amended, the plaintiff would be claiming Ac.0.18 cents more than the original extent of Ac.1.74 cents in Sy.no.1332/1, as per FMB, which is an authenticated document. Though it is not much of relevance in the temporary injunction applications filed in both the suits, the

defendants eventually succeeded and now both the suits are ripe for disposal. In fact, since the defendants' suit is a comprehensive suit, the learned counsel for the defendants already advanced his arguments in the two suits. Having regard to the peculiar facts of the case coupled with the facts that the properties of the plaintiff and the defendants are in two distinct survey numbers, viz., Sy.no.1332/1 & 1332/2, and that as a Commissioner had already visited the properties and measured the same with the help of a Mandal Surveyor and fixed the boundaries on land while noting the incorrect description of the boundaries on the Northern & Western sides of the plaint schedule property and as the FMB, which is a public document, discloses the extents of the two survey numbers and as the arguments on the side of the defendants are first advanced in the matter having regard to the fact that the suit of the defendants is a comprehensive suit and as the rectification deed deals with the rectification of boundaries on the North & West of the plaint schedule property in the instant suit and does not reflect about any variation in the extent, this Court finds that this is not a fit case to allow the amendment of the schedule of the plaint with regard to the boundaries on the North & West, as allowing such amendment at this belated stage displaces the defence of the defendants and causes irretrievable prejudice to the defendants.

9. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M.SEETHARAMA MURTI, J

10th December, 2018
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