

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.319 of 2019

ORDER :

This Civil Revision Petition is filed assailing the Order dt.23.11.2018 passed in I.A.No.150 of 2018 in O.S.No.1221 of 2012 on the file of Full Additional Charge-V Additional District and Sessions Judge, Ranga Reddy District, at L.B. Nagar.

2. The petitioners herein are defendants in the above suit.
3. The respondent / plaintiff filed the said suit against the petitioners for declaration that he is the absolute owner of the plaint schedule property, and for delivery of vacant possession of the suit schedule property after demolishing the structures thereon.
4. The plaint schedule property was described as a building constructed in Plot bearing No.98 in Survey No.403 at Attapur Village, Rajendranagar Mandal, R.R. District.
5. The plaintiff contended that he purchased the property from the 1st respondent under a registered sale deed bearing Document No.3554 of 1990 dt.02.03.1990, and when he visited the plot in July, 2011 he noticed that petitioners were raising illegal and unauthorized structures in the plot.
6. Written statement was filed by petitioners contending that the suit was filed at the instance of respondent's father, viz., Bhujanga Reddy; that respondent's father was residing in Netajinagar, nearer to

the suit schedule property; his father allegedly purchased plot No.120 near to the suit schedule property, and it cannot be believed that respondent's father had no knowledge of the construction being made in plot Nos.98 and 99 after cancellation of sale deed dt.02.03.1990, as he frequently visits plot No.120.

7. Thus, the pleading of petitioners is that there was a cancellation of the Sale Deed dt.02.03.1990; that thereafter, petitioners commenced construction in Plot No.98 and the respondent's father was aware of the said construction being made in plot Nos.98 and 99.

8. In November, 2017, petitioners filed I.A.No.150 of 2017 for amendment of the written statement by deleting the sentences in para no.3 of the written statement that respondent's father had knowledge of the construction being made in plot Nos.98 and 99 when he was frequently visited plot No.120.

9. Apart from this, they also sought to contend that the plaint schedule property was not part of a layout, that there was no plot bearing plot No.98 which was sold to respondent / plaintiff, and it was imaginary of respondent to suggest that Vasudevareddy Complex, i.e., the structure in the plaint schedule property was constructed on the said plot.

10. In this application, the petitioners contended that they were illiterates and agriculturists and their Counsel did not inform them what was written in the Written Statement; that they later took 'No

Objection' from him and engaged another Counsel and realized that their plea regarding non-existence of the suit schedule plot was not taken and so also was the plea that there was no layout or that the layout in which the plaint schedule plot No.98 fell. It was also contended that Vasudevareddy Complex was not located in the plot no.98 and the said plea was also not taken.

11. Counter-affidavit was filed by respondent opposing the said application. He contended that the allegations leveled by petitioners are not true, and the said plea cannot be allowed at the stage when the matter is posted for the petitioners' evidence. It was also contended that petitioners are trying to withdraw an admission made in the original written statement, and the same cannot be permitted.

12. By order dt.23.11.2018, the Court below dismissed the said I.A.

13. After considering the contents of the plaint and written statement as well as the I.A. and counter, the Court below held that according to plaintiff, the suit schedule property was plot No.98 and was adjacent to plot No.99; and in the written statement filed by the petitioners, there was a clear admission that Vasudevareddy Complex was constructed in plot Nos.98 and 99 and in Survey No.403 of Attapur Village. It held that if the proposed amendment is allowed, its result would be to withdraw such admission made in the written statement and would certainly result in prejudice to the respondent, and therefore, it cannot be permitted.

14. Assailing the same, the present Civil Revision Petition is filed.

15. The counsel for petitioners reiterated the contentions raised in I.A.No.150 of 2018 and sought to contend that the Court below was not correct in taking the view that it would amount to withdrawal of an admission if the said amendment is permitted.

16. I do not agree with the said contention, because the last three sentences in para no.3 of the written statement indicate that the plea of petitioners was that the father of respondent had knowledge of the construction being made by defendants / petitioners in plot Nos.98 and 99 when he frequently visited plot No.120. This plea indicated that even according to petitioners there were plot Nos.98 and 99 and 120 and construction of the complex was being made in plot Nos.98 and 99. Now by way of an amendment, petitioners want to contend that there was no layout, that there were no plots having numbers and there was no plot with plot No.98, and the said complex was not constructed on the said plot No.98.

17. In my considered opinion, if the I.A.No.150 of 2018 is allowed it would amount to permitting petitioners / defendants to take an inconsistent plea as compared to the original plea contained in the written statement which contained the admission in favour of respondent; and such inconsistent plea which would displace the plaintiff / respondent completely from the admissions made by petitioners in the written statement, cannot be allowed.

18. This view is supported by the decision of the Supreme Court in **Heeralal vs. Kalyan Mal and others¹** and **Modi Spinning & Weaving Mills Co. Ltd. vs. Ladha Ram & Co.²**.

19. I therefore do not find any merit in the Civil Revision Petition, and it is accordingly dismissed at the stage of admission. No order as to costs.

20. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18.02.2019
Ndr/*

¹ AIR 1998 S.C. 618

² AIR 1977 SC 680