

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.346 and 398 of 2019

COMMON ORDER :

Since these two Revisions arise between the same parties out of the same suit, they are therefore being disposed of by this common order.

2. The petitioners herein are defendants in O.S.No.926 of 2009 on the file of VII Additional Junior Civil Judge, Warangal.

3. The respondents / plaintiffs filed the above suit against them for a perpetual injunction restraining petitioners from interfering with their alleged possession and enjoyment of the plaint schedule property.

4. In the plaint, the respondent nos.1 and 2 have alleged that they are absolute owners and possessors of plot of extent 358 Sq.Yds., which is part and parcel of land in Survey No.294 of Wadepally Revenue Village, Hanumakonda Mandal, Warangal District; that they inherited the property from their father late Neelam Laxmaiah who was pattedar of Ac.0.34 guntas of land in the said survey number and who had died on 20.10.1997; that respondent nos.1 and 2 executed a registered agreement of sale-cum-General Power of Attorney dt.19.04.2007 in favour of 3rd respondent, and also delivered possession; that the 3rd respondent had also obtained permission on 28.07.2007 from the Warangal Municipal Corporation to construct a

house therein; and when the 3rd respondent was about to make construction, petitioners who are strangers, obstructed him. Therefore, they filed the suit.

5. The 2nd petitioner herein filed a written statement denying the plaint allegations. He contended that respondents deliberately shown a false survey number with false boundaries in the suit schedule and they are trying to encroach the land belonging to the 1st respondent. He contended that in the suit schedule property they have already constructed two rooms which were assigned Municipal No.2-7-496/4, and the 2nd petitioner had also obtained an *ex parte* decree on 08.10.2010 in O.S.No.1129 of 2009 by the Principal Junior Civil Judge, Warangal in respect of 408 Sq.Yds. located in Survey Nos.46, 49 and 50 (Old) corresponding to new No.442 and 443 of Waddepally, Hanamkonda.

6. In para no.7 of the written statement, it is contended that plaintiffs suppressed the real facts of the case; that late Neelam Laxmaiah during his life time sold the land in Sy.No.50 (Old) by dividing the same into plots to various persons; that one such plot admeasuring 275 Sq.Yds. was sold by Late Neelam Laxmaiah in favour of Smt. Gopu Venkatamma under a Notarized agreement of sale dt.14.11.1985 for a valuable sale consideration of Rs.16,500/-; and that the said Gopu Venkatamma, later sold the said plot in favour of Smt. Madadi Aruna, W/o. Manohar Reddy through a registered sale deed dt.31.03.2000 for a valuable sale consideration of Rs.54,000/-.

The 2nd defendant also submitted that one T. Lalitha Kumar, W/o.T.V.K. Narsimha Rao, who is the erstwhile owner of Plot No.4 admeasuring 280 Sq.Yds. out of Sy.No.442, 443 new corresponding to Old Nos.46 and 49 of Waddepally Shivar sold the said plot no.4 admeasuring 280 Sq.Yds. in favour of (i) Asma Naheed, W/o. Ameer Ali Khan, (ii) Nayyar Obedullah, W/o. Syed Obedullah, (iii) Sadia Saleem, W/o. Saleem, under a Notarized Agreement of Sale dt.06.02.1992 for a valuable sale consideration of Rs.54,000/-; that later the above said three persons sold the said plot in favour of Smt. Madadi Aruna, W/o. Manohar Reddy, under a registered Sale Deed dt.24.02.2000 for a valuable sale consideration of Rs.1,09,500/-; that Smt. A. Aruna became the absolute owner of total 408 Sq.Yds. out of Sy.Nos.46, 49 (Old) corresponding to New No.442 and 443 and Sy.No.550 (new) situated at Waddepally, Hanamkonda; that 1st defendant purchased the said 408 Sq.yds. from out of the survey numbers referred to above, from the erstwhile owner Smt. Madadi Aruna, under a registered Sale Deed dt.25.02.2002 for a valuable sale consideration of Rs.1,84,500/-, and since then the 1st defendant is in actual possession and enjoyment of the said property.

7. It is contended that 1st defendant has constructed a compound wall around the suit property and raised two rooms therein; that the Municipal Corporation has assigned house bearing No.2-7-496/4; that the 1st defendant also paid vacant land tax to the Municipal Corporation in respect of the suit property; that when the plaintiff

came to the suit property in the month of September, 2009 and tried to interfere, the 1st defendant filed suit O.S.No.1123 of 2009 and obtained *ex parte* decree on 08.10.2010; and that the said decree was still in force.

8. Thereafter, trial commenced and the evidence on the side of the respondents/plaintiffs concluded.

9. Chief-examination affidavit was filed by the 1st petitioner in March, 2018 as DW.1 and the case was coming up for cross-examination of DW.1.

10. At that stage, petitioners filed I.A.No.624 of 2018 to amend para no.7 of the written statement seeking the following reliefs :

“(a) *To delete the figure 275 and to substitute the figure 135 in fourth line of para no.7 of the Written Statement;*

(b) *To delete the figures 280 in 12 and 14th line of para no.7 of the Written Statement and to substitute the figures 273 in line 12th and 14th of Written Statement; and*

(c) *To delete the word Sy.No.550 in 22nd line of Para no.7 of the Written Statement.”*

11. They also filed I.A.No.625 of 2018 to make similar corrections in the Chief-examination Affidavit of D.W.1, already filed in the Court.

12. In both these applications, it was stated that there were some typographical mistakes in para no.7 of the Written Statement and also in the Chief-Examination Affidavit which require to be corrected.

According to him, these mistakes are not intentional, but occurred because 2nd petitioner filed the Written Statement in 2012 when the 1st petitioner was away at Waddepally and no prejudice would be caused to the respondents.

13. Counter-affidavit was filed by respondents opposing both the applications.

14. They contended that after the evidence of respondents was completed, at a late stage these applications are filed; that the respondents and their witnesses were cross-examined at length, and contrary to the suggestions put forth to the 1st respondent and other witnesses, this application is filed.

15. By separate orders dt.21.01.2019, both the applications were dismissed.

16. The Court below observed that though under Order VI Rule 17 proviso delay in seeking amendment is not fatal if the amendment is necessary to adjudicate the issues between the parties to the suit, but inconsistent pleas cannot be permitted and effect of admission cannot be taken away by an amendment.

17. It observed that a party when filing any statement or pleadings or affidavits in Court has to go through the contents of the same and then only put his signatures on it; that 2nd petitioner filed written statement in the main suit and the same was adopted by the 1st petitioner on 31.08.2012, but both petitioners remained silent till

March, 2018; and the petitioners cannot state that they have been diligent in the matter since they have been negligent.

18. Assailing the same, the present Civil Revision Petitions are filed.

19. Though the counsel for petitioners sought to contend that petitioners would suffer grave prejudice if the impugned orders are not set aside and the petitioners are not allowed to correct the typographical mistakes in the Written Statement and Chief-examination Affidavit, the petitioners, in my considered opinion, have not exercised due diligence, for both of them appear to have signed the pleadings as well as the Chief-examination Affidavit, without reading the contents which they ought to have done.

20. The counsel for petitioners relied on the decision in **State of Bihar and others v. Modern Tent House and another**¹ wherein the High Court refused to permit amendment of the Written Statement, but the Supreme Court allowed the same observing as under :

“ 8. We find that firstly, the proposed amendment is on facts and the appellants in substance seek to elaborate the facts originally pleaded in the written statement; secondly and in other words, it is in the nature of amplification of the defense already taken; thirdly, it does not introduce any new defense compared to what has originally been pleaded in the written statement; fourthly, if allowed, it would neither result in changing the defense already taken nor will result in withdrawing any kind of admission, if made in the written statement; fifthly, there is no prejudice to the plaintiffs, if such amendment is allowed because notwithstanding the defense or / and the proposed

¹ 2018 (2) A.L.D. 43 (S.C.)

amendment, the initial burden to prove the case continues to remain on the plaintiffs; and lastly, since the trial is not yet completed, it is in the interest of justice that the proposed amendment of the defendants should have been allowed by the Courts below rather than to allow the defendants to raise such plea at the appellate stage, if occasion so arises.”

21. However, it is clear from para no.3 of the said judgment that the suit itself appears to have been instituted in that case prior to 01.07.2002 when amendment to Order VI Rule 17 came into effect, i.e., proviso to Order VI Rule 17 was introduced prohibiting amendments unless due diligence is shown by the parties seeking such amendment that he could not claim such relief before the commencement of the trial. Therefore, the said decision cannot be of any assistance to petitioners.

22. In **J. Samuel and others vs. Gattu Mahesh and others**², the Supreme Court held that if the person who prepared a pleading and signed and verified it showed attention, typographical errors could have been noticed and rectified there itself and typographical errors would show that there is lack of due diligence by the party.

23. In view of the same, I am of the opinion that the Court below did not commit any error of jurisdiction in refusing to permit the petitioners to amend the Written Statement as well as the Chief-examination Affidavit.

² (2012) 2 S.C.C. 300

24. Accordingly, the Civil Revision Petitions fail and they are dismissed. No order as to costs.

25. As a sequel, miscellaneous petitions pending if any in these Civil Revision Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27.03.2019

Ndr/*

