

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.7412 of 2017

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.14-11-2017 in I.A.No.200 of 2016 in O.S.No.6 of 2013 of the Special Judge for SC/ST (POA) Act-cum-V Additional District and Sessions Judge, Sangareddy.

2. Petitioner is 5th defendant in the suit.
3. The said suit was filed by respondent Nos.1 to 4 against him and others to declare the title of respondent Nos.1 to 4 and for a perpetual injunction.
4. In the plaint, it is the contention of respondent Nos.1 to 4 that property belongs to the father of respondent Nos.1, 2 and 4; that after his death, they succeeded to the property; that 5th respondent herein executed a sale deed in favour of 6th respondent vide Doc.No.5109/1995 claiming himself to be G.P.A. holder of Sri R.Subramanyam, father of respondent Nos.1, 2 and 4; in the said sale deed Doc.No.5109/1995, the 5th respondent mentioned G.P.A. Document Number as 305/92 etc.; and that none of these G.P.As. were executed by said Subramanyam. According to them, G.P.A. Doc.No.305/92 is not in respect of the suit schedule property or other any other land, but is in respect of maintenance of N.R.I. Bank

Account by one D.Vishweshwar Rao in favour of his brother D.Jagadeeshwar Rao.

5. It is contended that respondent Nos.7 and 8 had executed a sale deed in favour of the petitioner being Doc.No.5544/2005 and the petitioner did not acquire any interest in the suit schedule property from them since they had no right therein.

6. Written statement was filed by petitioner opposing the suit claim. He contended that he had verified the registered G.P.A. Doc.No.305/92 after receiving summons in the suit and realized that there was a typographical error occurred while typing the G.P.A. as Doc.No.305/92 instead of 305/91 in the sale deed Doc.No.5109/95 executed by 5th respondent in favour of 6th respondent and that the correct G.P.A. Doc.No. is 305/91.

7. He later filed I.A.No.200 of 2016 under Order VI Rule 17 C.P.C. seeking amendment of the written statement filed by him by mentioning the G.P.A. as having Doc.No.305/91 instead of Doc.No.305/92 and also sought by way of counter-claim, relief of rectification of the registered sale deed Doc.No.5109/95, so that it correctly reflects the correct Doc.No.305/91 instead of 305/92.

8. In the affidavit filed in support of the said application, he stated that the typographical error in mentioning the sale deed Doc.No.5109/95 of the year 1992 instead of 1991 when G.P.A. Doc.No.305 was executed, requires correction and that the G.P.A.

Doc.No.305/92 did not correctly reflect the final intention of the parties.

9. Counter-affidavit was filed by respondent Nos.1 to 4 opposing this application and taking a plea that rectification can only be sought by the person who executed the registered sale deed being Doc.No.5901/1995, but not the petitioner.

10. By order dt.14-11-2017, the Court below dismissed the said application. The Court below went into the correctness and merits of the amendment sought by petitioner, and observed that any rectification to a registered document cannot be made even as per Registration Act, 1908 unless registered rectification deed is executed by the party to the said document which makes the document authenticated, valid and legal. It observed that mere amendment to the written statement rectifying the error occurred in mentioning of registered GPA document number in the registered sale deed is not permissible under law and the Court cannot usurp the powers of the Registration Authority by allowing such amendment to the written statement.

11. Assailing the same, this Revision is filed.

12. Heard the learned counsel for petitioner and the learned counsel for respondents.

13. Learned counsel for petitioner contended that while deciding whether or not to allow amendment, the Court cannot go into the

correctness of the case set up in the written statement and therefore the order passed by the Court below cannot be sustained.

14. Learned counsel for the respondents, however, supported the order passed by the Court below.

15. The principle on which to allow amendment of pleadings is that the Court should try the merits of the case that come before it and should, consequently, allow all amendments that may be necessary for determining the real question in controversy between the parties, provided it does not cause injustice or prejudice to the other side. The purpose of allowing amendment is to minimize the litigation and the Court, while deciding whether or not to permit the amendment, cannot go into the merits of the amendment.

16. This legal position is not disputed by the learned counsel for respondent Nos.1 to 4.

17. Since the Court below has unfortunately gone into the merits of the case set up in the written statement, the order passed by the Court below cannot be sustained.

18. Learned counsel for respondent Nos.1 to 4 further pleaded that the counter-claim itself is not maintainable at a belated stage. The said issue was not argued by the respondents in the Court below and was not decided by it. When they did not argue the point, they cannot urge it in this Court. But the Court below can, after written statement

is filed to the counter claim by respondent Nos.1 to 4, frame an issue and decide it.

19. Therefore, the order dt.14-11-2017 in I.A.No.200 of 2016 in O.S.No.6 of 2013 of the Special Judge for SC/ST (POA) Act-cum-V Additional District and Sessions Judge, Sangareddy is set aside and the said I.A. is allowed. The respondent Nos.1 to 4 shall be granted permission to amend the plaint or file rejoinder to the amended written statement and also file written statement to the counter-claim raised by petitioner and shall be entitled to raise all legal and factual contentions open to them at law.

20. The Civil Revision Petition is allowed with the above directions. No costs.

21. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-04-2019

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