

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.7441 of 2017

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.24.08.2017 passed in I.A.No.550 of 2015 in O.S.No.636 of 2010 on the file of II Additional Junior Civil Judge, Warangal.

2. The petitioner herein is plaintiff in the above suit.
3. He filed the said suit against respondent for a perpetual injunction restraining the respondent from interfering with his alleged possession and enjoyment of the suit schedule property which is plot No.56 admeasuring 311 Sq.Yds in Survey Nos.526 to 530 of Waddepally Village, Hanumakonda Mandal of Warangal District.
4. The petitioner contended that he purchased the said property under a registered Gift Deed dt.26.08.1996.
5. According to him, his brother purchased it under a registered sale deed dt.14.08.1986 from its original owners and was in possession and enjoyment of the same since 26.08.1996; that later he got rectified the northern boundary by deleting plot No.55 and adding 20 feet road through a Rectification Deed dt.17.11.2009; and that the respondent tried to occupy the same on 07.06.2010, and so he filed the present suit.

6. Written Statement was filed by respondent opposing the suit claim.

7. Thereafter, before trial commenced, the petitioner filed I.A.No.550 of 2015 to amend the plaint schedule by adding before the word “the northern boundary after 20 feet road” the words “*previously Plot No.55 of the respondent*”. He contended that though he obtained a Rectification Deed initially on 17.11.2009, he got the said Rectification Deed cancelled on 24.05.2013 through another registered Document, and got restored the original boundaries mentioned in the Document dt.26.08.1996; and that in view of the same, the plaint needs to be amended.

8. By order dt.24.08.2017, the Court below dismissed the said application. It referred to the dismissal of an application under Order XXXIX Rules 1 and 2 of Civil Procedure Code, 1908 filed by petitioner, and its confirmation in Civil Miscellaneous Appeal No.75 of 2001 on 31.01.2012, and pointed out that when the matter was posted for trial, this application is filed, though such trial had not yet begun. The Court perused the document canceling the Rectification Deed and noted the recitals therein and observed that no reason is mentioned why the said cancellation was done of the Rectification Deed. It therefore held that petitioner, as per his whims and fancies, is trying to alter the northern boundary and the same cannot be permitted. It observed that merely because petitioner has executed a

revocation of the Rectification Deed after four (04) years, he cannot amend the Schedule in the plaint.

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

10. The counsel for petitioner contended that the Court below could not have gone into the correctness of pleading in the application for amendment while deciding whether or not to allow the amendment application, and the observations made by the Court below are not warranted. When the Court below had noticed that when the trial itself had not begun and that amendment, if permitted, would not change the nature of the suit, it ought to have allowed the application for amendment.

11. The counsel for respondent refuted the above contentions and supported the order passed by the Court below.

12. A reading of the order passed by the Court below indicates that the Court below had gone into the contents of the Deed of Cancellation of the Rectification Deed and drawn certain conclusions on the merits of the amendment sought by petitioner.

13. It is settled law that while deciding whether or not to permit amendment of a pleading, merits of the amendment cannot be gone into.

14. When the trial of the suit had not yet commenced and permitting the amendment does not alter the nature of the suit, the

Court below ought to have permitted amendment of the plaint as sought by petitioner because the respondent would not suffer any prejudice, since he would get an opportunity to amend his Written Statement also.

15. Accordingly, the Civil Revision Petition is allowed. The order dt.24.08.2017 passed in I.A.No.550 of 2015 in O.SNo.636 of 2010 on the file of II Additional Junior Civil Judge, Warangal is set aside; and the said I.A. is allowed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 22.04.2019

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