

HIGH COURT OF ANDHRA PRADESH

Bench: JUSTICE R RAGHUNANDAN RAO

Date of Decision: 16th April 2024

SPECIAL ORIGINAL JURISDICTION

CIVIL REVISION PETITION NO. 198 OF 2024

Dommaraju Beerendra Varma ...PETITIONER

VS

Dommaraju Surekha ...RESPONDENT

Legislation and Rules:

Order VI Rule 17 of the Code of Civil Procedure, 1908 (C.P.C.)

Subject: Dispute over the amendment of property boundaries in a suit for permanent injunction after the commencement of trial - Appeal against the trial court's decision allowing such amendment.

Headnotes:

Background of Property Dispute – Respondent filed O.S.No.55 of 2018 for a permanent injunction to restrain petitioner from interfering with her possession of agricultural land, setting specific boundaries in the plaint, which were later sought to be amended due to claimed typographical errors - Petitioner opposed, asserting boundaries were fabricated and could not be amended post trial commencement. [Para 1-4]

Trial Court's Decision – Allowed amendment application filed by the respondent under I.A.No.816 of 2023 despite petitioner's objection that such amendments post-trial commencement are barred by the proviso to Order VI Rule 17 C.P.C. unless due diligence could not have identified the need for amendment prior. [Para 5]

Legal Argument and Court's Assessment – Petitioner argued amendment barred post-trial, not meeting due diligence requirement - Respondent cited inadvertent error, not detectable by due diligence, aligning partly with petitioner's boundaries - Court found the amendment justified as it corrected a typographical error and both parties agreed on Southern boundary, while Northern boundary differed slightly between parties. [Paras 6-12]

High Court's Ruling – Affirmed trial court's decision, stating the amendment met criteria under Order VI Rule 17 C.P.C., and no prejudice to petitioner was evident - Civil revision petition dismissed, no order as to costs. [Paras 12-13]

Referred Cases: None cited explicitly.

Representing Advocates:

For the Petitioner: Sri G.R. Sudhakar, appearing on behalf of Sri Vinod K. Reddy

For the Respondent: Sri V. Eswaraiah Chowdary

ORDER:

The respondent/plaintiff filed O.S.No.55 of 2018 against the petitioner herein, before the Senior Civil Judge, Srikalahasti, for grant of permanent injunction restraining the petitioner from interfering with her possession and enjoyment over the suit schedule property, admeasuring Ac.14.50 cents of agricultural land in Sy.No.208/A of P.V. Puram, Satyavedu Mandal, Tirupathi Division, Chittoor District. The respondent set out the boundaries of the land in the schedule attached to the plaint in the following manner:

East : Land of Raghava Reddy

West : Road

North : Land of V. Mastan.

South : Land of D. Kodandapani Raju

2. The petitioner/defendant filed a written statement, in which the petitioner took a plea that the original document, on the basis of which, the respondent was claiming title, was a fabricated document and in any event, the said document did not set out any boundaries of the suit schedule property while the respondent was trying to set out such boundaries and the same was not permissible. The petitioner also took various other pleas which are not germane to the present case.

3. The respondent, after trial had commenced and a witness had been examined in chief, had filed I.A.No.816 of 2023 for amending the Northern and Southern boundaries of the plaint schedule. It was the case of the respondent that the Northern boundary should have been the land of D. Kodandapani Raju and the Southern boundary should be land of V. Masthan. However, the plaint reflected the Northern boundary as the land of V. Masthan and the Southern boundary as the land of D. Kodandapani Raju. The said mistake is said to have occurred on account of inadvertence and the said mistake was realized when the learned counsel for the respondent was going through the entire plaint for the purpose of producing necessary evidence before the Court. It was contended that

the said amendment would not in any manner effect the merits of the case or cause prejudice to the defense raised by the petitioner and the same could be allowed.

4. The petitioner filed a counter affidavit in which the petitioner contended that the settlement deed dated 07.03.2018, through which the respondent was claiming her right and title, did not contain any boundaries despite which the respondent had shown wrong and invented boundaries and as such the said amendment should not be allowed. The petitioner also took the ground that the correct boundaries had been shown by him in his written statement filed on 10.07.2019 and as such the respondent cannot seek to amend the boundaries now. The petitioner also took the defense that amendment of a suit after commencement of the trial and after the petitioner had been partly cross-examined, is not permissible.

5. The trial Court allowed the application by order dated 24.11.2023, against which the present civil revision petition has been filed by the petitioner/defendant.

6. Sri G.R. Sudhakar, learned counsel appearing on behalf of Sri Vinod K. Reddy, learned counsel for the petitioner, would contend that the amendment of plaint, after commencement of trial is expressly barred by the proviso to Order VI Rule 17 C.P.C., which reads as follows:

“Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court

comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial”.

7. Sri G.R. Sudhakar, learned counsel would further submit that the petitioner had already given correct boundaries and as such the respondent cannot be permitted to change boundaries at this belated stage and any such change would affect the rights of the petitioner. He would also argue that the requirements of the proviso, for permitting any amendment, have also not been made out by the respondent.

8. Sri V. Eswaraiah Chowdary, learned counsel appearing for the respondent would submit that the mistake is an inadvertent typographical error and the same could not be detected by any due diligence and it was only at the stage of trial that the mistake was realized. He would submit that the requirement of the proviso to Order VI Rule 17 C.P.C., is met. He would further submit that no prejudice would be caused to the petitioner by the said change.

10. The petitioner, in paragraph 20 of his written statement, had given the boundaries of the suit schedule property, in the following manner:

East : Navennetha Krishnama Raju and D.N. Vijayasimha

West : R & B road from China Panduru – Nagalapuram North :

Lands of Gajapathi Raju

South : Lands of V. Masthan, V. Munemma & D. Subramanyam

Raju.

11. The respondent is now seeking to change the Northern and Southern boundaries to show that the Southern boundary is the land of Sri V. Masthan and others. This is in accord with the description of the Southern boundaries by the petitioner also. As far as the Northern boundary is concerned, it is the contention of the petitioner that the Northern boundary is the land of Sri Gajapathi Raju while the respondent claims that the Northern boundary of the suit schedule property is the land of Sri D. Kodandapani Raju. As far as the Southern boundary is concerned both the petitioner and the respondent are in agreement with the Southern boundary, which is the land of Sri V. Masthan. To that extent, the petitioner cannot have any objection for a correction in the boundary. Once the said correction is carried out, the boundary on the Northern side would have to be corrected as a consequence.

12. Apart from this, the requirement of the proviso to Order VI Rule 17 C.P.C., is that any amendment to the plaint would be permissible, even after commencement of trial, if it is shown that such a defect could not have been found out without due diligence and that an application for amendment is moved immediately upon realizing the need for amendment. In the present case, this Court is of the opinion that both the eventualities have been complied with.

13. In these circumstances, this Court does not find any

reason to interfere with the order of the trial Court and this civil revision petition is dismissed. There shall be no order as to costs. As a sequel, pending miscellaneous applications, if any, shall stand closed.

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