

IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC.,
AT RAMANAGARA

:PRESENT:

Smt.Anupama Lakshmi.B., B.A., LL.B.,
Addl. Senior Civil Judge & JMFC.,
Ramanagara.

FDP.No.38/2017

DATED : THIS THE 08th DAY OF JULY 2020

Petitioner : Smt.Rangamma
W/o Revaiah
D/o Byatamma & Hombaiah
Aged about 53 years
Bidadi Hobli
Ramanagara Taluk
Bangalore Rural District.

-V/s-

Respondents: 1. Hombaiah
S/o Late Hombaiah
Aged about 63 years

2. Anand.H
S/o Late Hombaiah
Aged about 42 years

3. Kumar.H
S/o Late Hombaiah
Aged about 40 years

4. Karehanumaiah
S/o Late Hombaiah
Aged about 36 years
5. Byata Venkatappa
S/o Late Hombaiah
Aged about 58 years
6. Manjunath.B
S/o Byata Venkatappa
Aged about 39 years
7. Nagarathna.B
D/o Byata Venkatappa
Aged about 37 years
8. Srinivasa.B
S/o Byata Venkatappa
Aged about 34 years
9. Thimmaiah
S/o Late Hombaiah
Aged about 51 years
10. Smt.Eramma
W/o Nagaraju
Since dead by her LR's
 - a) Nagaraju.D.C
H/o Late Eramma
Aged about 50 years
 - b) Smt.Manasa.D.C
D/o Late Earamma
Aged about 28 years

c) Smt.Roopa Sree.D.C
D/o Late Eramma
Aged about 26 years

All are R/at Manchanayakanahalli
M.H.Post, Bidadi Hobli
Ramanagara Taluk and District.

11. The Special Land Acquisition Officer
Bangalore Mysore Road
National Highway-275
Basavanapura Village
Ramanagara Taluk & District.

Orders on I.A.X filed Under Order XLVII Rule 1(a) R/w
Section 151 of C.P.C.,

The applicant/respondent No.1 filed the petition to review the orders dated:12-04-2019 passed on IA dated: 19- 09-2018 by this Court.

2. The applicant/respondent No.1 has sworn to an affidavit annexed to the petition and submitted that, the petitioner filed O.S.No.54/2006 on the file of this Court for the relief of partition and separate possession of the suit schedule properties. The said suit was decreed on

16-08-2012. Thereafter, the petitioner initiated final decree proceedings.

The petitioner on 05-03-2018 filed IA under Sections 152 and 153 R/w Section 151 of CPC., for amendment of boundaries of schedule “A” and “B” properties in preliminary decree passed in O.S.No.54/2006. The applicant filed objections and the application was allowed on 28-05-2018. The applicant preferred W.P.No.26339/2018 challenging the said orders.

That during the pendency of the said Writ Petition the petitioner filed IA dated:19-09-2018 under Order VI Rule 17 R/w Section 151 of CPC., for amendment of boundaries of schedule “A” and “B” properties in final decree proceedings. The applicant filed objections to the said application. However, on 12-04-2019 the said application was allowed.

That the IA dated:19-09-2018 is hit by Section 11 of CPC., as the petitioner filed another IA dated:05-03-2018 for the same relief before this Court.

That there is an error apparent on the face of the order dated:12-04-2019 as it is not known whether it is legally permissible to carryout amendment in the final decree proceedings without carrying out amendment to the schedule properties in O.S.No.54/2006. That the suit is of the year 2006, therefore an amendment application seeking rectification of boundaries and extent of the suit schedule properties could not have been allowed in the final decree proceedings filed in the year 2017. Such amendment will give rise to future litigation regarding identification and location of the suit properties and it ought not to have been allowed without holding an enquiry. Hence, the application.

3. The opponent/petitioner filed statement of objections. According to the opponent the Court allowed IA filed by the petitioner under Order VI Rule 17 R/w Section 151 of CPC., imposing costs of Rs.1,000/-. The petitioner made payment of costs and the learned counsel for the applicant received the cost and the petitioner carried-out the

amendment. The applicant or other respondents did not challenged the said orders and the same attained finality. The applicant after lapse of statutory limitation filed the application. Hence, the application is not maintainable.

That Hon'ble District Court only is empowered to entertain the petition filed under Order XLVII of CPC.

That the Court while considering the application and objection filed under Section 54 of CPC., directed the petitioner to file necessary amendment application as per orders dated: 26-02-2018. Therefore, the petitioner filed application under Sections 152 and 153 R/w Section 151 of CPC. The said IA was allowed and the Court directed the Court office to carry out amendment. Accordingly, the Court passed the preliminary decree.

That as per the contention of the applicant, necessary amendment was sought to boundaries and measurement of the schedule properties. That the applicant to drag on the proceedings sought review of the orders of this Court

without any merits. Therefore, the petitioner prayed for dismissal of the application with exemplary costs.

The respondent No.6 filed statement of objections. The respondents No.5, 7 and 8 adopted the said statement of objections.

According to the respondent No.6, only the 1st respondent filed the counter statement to the IA dated: 19-09-2018 filed under Order VI Rule 17 of CPC., and the other respondents consented for amendment. The Court after hearing the both sides allowed the application with costs of Rs.1,000/-. On 22-04-2019 the learned counsel for respondent No.1 received the costs of Rs.1,000/- and on the basis of the same the petitioner carried out amendment to the FDP petition.

That the 1st respondent has paid Court fee seeking final decree in respect of his share of properties. But, he filed the present petition to drag on the proceedings. That the respondent No.1 filed counter statement to the Main Petition

and to the IA under Section 54 of CPC., filed by the petitioner stating that, certain rectification in respect of extent and boundaries of the schedule properties have to be made.

The petitioner on the basis of the counter statement of the applicant preferred IAs for rectification of preliminary decree and petition for final decree proceedings. That the present application is barred by limitation. Therefore, the 6th respondent prayed for dismissal of the application with the costs.

4. Heard.

5. The following points arise for my determination:

- (1) *Whether there is an error apparent on the face of order dated:12-04-2019 passed by this Court on IA dated:19-09-2018?*
- (2) *What order ?*

6. My findings on the above points are as under:

Point No.1 : *In the Negative*

Point No.2 : *As per final order for the following:*

REASONS

7. **Point No.1:** The respondent No.1 is seeking review of the orders dated:12-04-2019 passed by this Court on IA filed by the petitioner under Order VI Rule 17 of CPC., for amendment of boundaries and extent of schedule properties detailed in the petition for final decree proceedings.

8. The learned counsel for the respondent argued that, the petitioner filed IA under Sections 152 and 153 R/w Section 151 of CPC., to amend the preliminary decree. But, the said amendment was done only in the original suit/proceedings. Apart from that, the petitioner has not sought amendment of the plaint. However, the petitioner filed IA under Order VI Rule 17 of CPC., to amend the extent and boundaries of the petition schedule properties and the said application was allowed. Therefore, there is an error on the face of the orders passed by this Court on the amendment application since, the earlier application filed

seeking correction of the extent and boundaries of the properties in the preliminary decree was not a clerical error.

9. The learned counsel for the respondent No.1 has relied upon the following decisions:

WP No.11455-56/2010

Sri.Karibassappa and Another V/s Basavarajappa and Others

In the said decision the Trial Court rejected the application filed under Order VI Rule 17 of CPC., in FDP proceeding seeking to amend the plaint schedule. The Hon'ble High Court of Karnataka held that, the corrections proposed by the petitioner are neither clerical or arithmetical mistakes nor clerical mistakes. It was further held that, the amendment at the stage of the final decree proceedings cannot be permitted especially when the boundaries are sought to be changed.

1998(1) ALD 129

Amina Bee(died) by LR's and Others V/s Aisha Khatoon and Others

The Hon'ble Hight Court of Andrapradesh held that, the impugned order suffers from incurable infirmity. The impugned order suffers from lack of jurisdiction. The application under Section 152 R/w Order VI Rule 17 of the Code filed by the respondents/defendants in the Trial Court is totally mischievous, as admittedly, it is not a case of arithmetical or clerical error. The Trial Court has not ordered any amendment in the plaint schedule and straight away amendment has been ordered amending the preliminary decree. The case does not fall under Order VI Rule 17 and Section 152 of the Code of Civil Procedure.

10. The learned counsel for the petitioner argued that, the IA filed under Order VI Rule 17 of CPC., was allowed on 12-04-2019. The review petition as per Article 124 of Limitation Act ought to have been filed within 30 days from the date of the said orders. But, the review petition was filed after lapse of 2½ months from the date of orders. Therefore, the review petition is barred by limitation. Moreover, IA seeking condonation of delay is not filed.

11. The learned counsel for the petitioner further argued that, the respondent No.1 filed a memo dated:04-12-2017 that, the order passed by the Court may be modified and the 1st respondent may be permitted to proceed with the further construction as detailed in the memo. Apart from that, on 04-12-2017 the respondent No.1 filed statement of objections submitting that, the extent being less than what is claimed and existing, the petitioner can amend the petition and the Court may be pleased to draw additional

another preliminary decree as to extents by deducting what is sold already. Accordingly, applications were filed to correct the preliminary decree and the petition. Therefore, the respondent No.1 is estopped from filing the present application.

12. The learned counsel for the petitioner has relied upon the following decisions:

2014(3) KCCR SN 168(SC)
N.Anatha Reddy V/s Anshu Kathuria and Others

Where in it is held that, Order XLVII Rule 1-review powers-held, the review jurisdictional is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for review. The mistake apparent on record means that, the mistake is self-evident, needs no search and stares at its face.

2017(2) KCCR 1116
Commissioner, Bengaluru Development Authority V/s Mruthnyunjaya

Wherein it is held that, it must be an error of inadvertance. It should be something more than a mere error and it must be the one, which must be manifest on the face of the record. If the error is so apparent that without further investigation or enquiry, only one conclusion can be drawn in favour of the applicant, the review will lie. Under the guise of

review that parties are not entitled to the re-hearing of the same issue.

13. The learned counsel for the respondents No.5,7 and 8 argued that, to review the orders, there must be an error apparent on the face of record. Here, the applications were filed as per the statement of objections filed by the respondent No.1. Furthermore, the amendment was carried out without there being any objections by the respondent No.1. Therefore, the application is not maintainable.

14. The respondent No.6 argued that, the amendment application was allowed on costs and the learned counsel for the respondent No.1 received the costs. Thereafter, amendment was carried out. Hence, review petition is not maintainable.

15. The respondent No.6 relied upon the following decisions:

2020(1) KAR.L.R 73

Smt.Siddalingawwa W/o Mallappa Salotagi and Others V/s Siddappa @ Siddanagouda and Others.

Wherein it is held that, the Trial Court has dismissed the application filed under Sections 152 and 153 of CPC.,

mainly on the ground that, Sections 152 and 153 of CPC., are not applicable so as to amend the plaint and the cause title and also property numbers in the body of the plaint. Only on the technical ground, the application filed under Sections 152 and 153 of CPC., has been dismissed.

That the amendment cannot be refused just merely because of some mistake, negligence, inadvertence or any infraction of the rules or procedure. The Court should always heed to the amendment of the pleadings of the parties to administer substantial justice. Unless, it is satisfied the party applied amendment is coming with mala fide intention or his blunder may not be compensated by any measure. However, even there was some negligence or careless act on the part of the party, that itself may not be sufficient to refuse proper amendment, which is virtually necessary for proper adjudication of the rights of the parties.

2020(1) KAR.LR 36

Ashok Plantations(P) Ltd., V/s D.D.Ramesh S/o Deva Shetty and Others

Wherein it is held that, in order to attract the provisions of Order XLVII of CPC., the petitioner has to establish that there has been the discovery of important evidence or circumstances that was not agitated earlier or petitioner was prevented by sufficient cause from urging the same or due to the circumstances he could not produce the evidence that was present at the time of disposal of the matter.

16. I have perused the decisions. As per the decisions furnished by the respondent No.1 amending the preliminary

decree without there being amendment of the plaint schedule is not permissible and such an amendment of the preliminary decree does not come under the purview of Section 152 of CPC.

As per the decisions relied upon by the petitioner and the respondent No.6, review petition can be allowed if there is an error apparent on the face of the record and Court should always heed to the amendment of the pleadings of the parties to administer substantial justice.

In the present case, the petitioner has got amended the preliminary decree passed in O.S.No.54/2006 by filing IA in the present case itself under Sections 152 and 153 R/w Section 151 of CPC. The respondent No.1 has challenged the said orders by filing Writ Petition before the Hon'ble High Court of Karnataka. The petitioner subsequently filed IA under Order VI Rule 17 of CPC., to amend the schedule of the petition in the present proceedings. As per the case of the petitioner, the said applications were filed at the

instance of the respondent No.1, since the said respondent in his statement of objections made it clear to rectify the extent and boundaries of the suit schedule properties.

17. Be that as it may. The petitioner has not got amended the schedule in the plaint in the original suit. However, the petitioner got amended the preliminary decree and the petition in the present final decree proceedings. According to the respondent No.1, carrying out amendment in the final decree proceedings without carrying out amendment to the suit schedule properties in O.S.No.54/2006 itself is an error apparent on the face of the order dated:12-04-2019. As contended by the respondent No.1 it is an error but this Court does not see any error in the orders dated:12-04-2019 passed on IA under Order VI Rule 17 of CPC.

18. Apart from that, the present petition for review is not preferred within the period of limitation. The respondent No.1 ought to have filed the review petition

within 30 days from the date of orders passed on IA under Order VI Rule 17 of CPC. Therefore, there are no grounds to review the orders dated:12-04-2019. Therefore, I answer

Point No.1 in the Negative.

19. **Point No.2** : Based on findings in Point No.1, this Court proceeds to pass the following:

ORDER

I.A.X filed by the respondent No.1 under Order XLVII Rule 1(a) R/w Section 151 of C.P.C., is rejected with costs of Rs.500/-.

(Dictated to the Stenographer directly on the computer and computerized by him, corrected, signed and then pronounced by me in the Open Court on this the 08th day of July 2020.)

(Smt.Anupama Lakshmi.B)
Addl. Senior Civil Judge & JMFC.,
Ramanagara.