

(1965) 06 AP CK 0008

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 99 of 1964 and Criminal Revision Petition No. 97 of 1964

C. Umamaheswara Rao and Another

APPELLANT

Vs

Sri Hanumandeswara Devasthanam represented by Executive Officer, Ch. Ramakrishna Rao and Another

RESPONDENT

Date of Decision : 21-06-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17, 151
Criminal Procedure Code, 1898 (CrPC) — Section 435, 439

Citation : AIR 1966 AP 33 : (1966) CriLJ 123

Hon'ble Judges : Anantanarayana Ayyar, J

Bench : Single Bench

Advocate : N.C.V. Ramanujachari, for M. Lakshmanachari and Ahmed Hussain, for the Appellant; R. Venugopalareddy and Public Prosecutor on behalf of the State, for the Respondent

Final Decision : Dismissed

Judgement

Anantanarayana Ayyar, J.—The Executive Officer of Sri Hanumandeswara Devasthanam situate at Koyyetipadu filed M. P. No. 14 of 1963 in the Court of the learned Additional District Munsif- Magistrate, Tanuku, citing eight respondents and praying for delivery of possession of various items of properties mentioned in the schedule in accordance with it certificate issued by the Deputy Commissioner of Endowments, Ex. P. 1. The schedule of properties in M. P. No. 14 of 1963 agreed with the schedule of properties given in Ex. P. 1 the first respondent who is a hereditary trustee of the temple filed a counter contesting the petition. So did the 2nd respondent who is the archaka of the temple. The other respondents remained ex parte.

1a. The petitioner filed M. P. No. 59 of 1963 praying for an amendment of the schedule to his petition by showing against items Nos. 4, 8, 9 and 11 new patta numbers and survey numbers. His contention was that the patta numbers and survey numbers given in the certificate of the Deputy Commissioner were the

figures as they stood in 1950 under the old survey and that the new survey numbers which he wanted to be put were the numbers which came to be given to the same items of the land as a result of a supplementary survey. The first respondent contested the petition (M. P. No. 59 of 1963). The learned Munsif-Magistrate proceeded to record evidence in the main proceedings in M. P. No. 14 of 1963. The Executive officer deposed as P. W. 1 and marked various documents including Ex. P. 1. Ex. P. 2 is the certified copy of the 8 Register relating to Koyyetipadu village which shows the patta numbers as they stood in 1958. Ex. P. 3 is a certified copy of the extract of the Fair Adangal as it stood after the supplemental survey. The extent of the various items i.e., 4, 8, 9 and 11 are the same in Ex. P. 2 and Ex. P. 3. The learned Munsif Magistrate passed orders dated 23-13-1963 allowing the amendment as prayed for in M. P. No. 59 of 1963 and also directing delivery of possession as prayed for by the petitioner in M. P. No. 14/1963. Respondents 1 and 2 (as numbered in M. P. No. 14 of 1963) fell aggrieved by that order and filed this revision.

2. In the affidavit filed in support of the amendment petition, it is stated as follows:

"According to supplemental survey the patta numbers and some survey numbers are changed from the schedule filed in this petition. The urea is the same and there is only change in survey numbers for four items only. After the Eetitkm is ordered for delivery of the schedule lands, there will be some practical difficulty in executing the order as per the supplemental survey. Hence the schedule filed along with the main petition is to be amended in this respect to put the corresponding supplemental survey numbers and patta numbers only to avoid practical difficulty at the time of delivery."

3. In the proposed amended schedule, the new survey numbers and patta numbers (title deed numbers) are not shown after omitting the original survey numbers and patta numbers, They are only shown in addition to the original patta numbers and survey numbers against each respective item. The Executive Officer as P. W. 1 deposed in support of his allegation in the petition as follows:

"I have no objection even if possession was ordered under the old survey numbers as stated in the certificate. I pray for delivery of property mentioned under the Schedule with the standing crops thereon. . . ."

4. The learned Munsif Magistrate allowed the amendment, and also ordered delivery on the following main grounds:--

1. Ex. P. 2, was given from the "B" Registers in 1368 Fasli which roughly corresponds to 1958. The application was filed long before the supplemental survey. So, the numbers given in Ex. P. 2 are as they stood before the supplemental survey. The numerical change in the numbers of four items of the properties by the supplemental survey did not affect the extent, area, boundaries and description of the properties.

2. There is no reason why the amendment cannot be maintained under Order 6 Rule 17 C. P. C. read with Section 151 C. P. C.

3. There is no ground on which the respondents could validly object to deliver possession of the properties.

5. A preliminary objection is raised by Shri R. Venugopala Reddy on behalf of the Executive Officer that this revision is not maintainable in this Court because the revision petitioners did not approach the learned Sessions Judge in the first instance but came here direct in revision. For this purpose, he relies on the decisions of this Court in *Ramayya v. Venkata*, (S) AIR 1956 AP 97 and *Alapati Sriramamurty and Others Vs. State of Andhra Pradesh*, .

6. Shri N. C. V. Ramanujachari, the learned advocate for the revision petitioners, contends that this revision can be heard here and need not be dismissed because there is an important point of law i.e., as to whether an amendment petition under Order 6, Rule 17 C. P. C. read with Section 151 C. P. C. lies in proceedings u/s 87 of the Madras Hindu Religious and Charitable Endowments Act. He relies on the following observations in the decision of the Full Bench in *Alapati Sriramamurty and Others Vs. State of Andhra Pradesh*,

"However, this is not an inflexible rule of invariable application. It is always open to a party to move directly this Court.... But this should be confined to the cases of Special nature. In the case on hand, we do not propose to direct the petitioners to approach the tower Court.. . . since some important questions of law are involved. These cases will go back to the Bench for disposal on merits..."

7. I find that there is an important question of Jaw and that this revision can be disposed of by me itself instead of giving a direction to the party to approach the Sessions Judge in the first instance.

8. The first ground given by the learned Munsif Magistrate is on a question of fact and is based on good evidence. I see no reason to doubt its correctness.

9. The main contention of Shri Ramanujachari for the petitioners is that the second ground given by the Munsif Magistrate is not correct. He contends that the provisions of the CPC have no application to proceedings u/s 87 of the Act. His contention that the learned Munsif Magistrate, u/s 87 of the H. R. and C. E. Act was acting as an inferior criminal Court is certainly correct and is supported by the Judgment dated 7-9-1960 in *CrI. R. C. No. 388 of 1960 (AP)* which has been approved in a subsequent decision of this court in *Ch. Purusbotham v. Ramalingeswaraswamy Temple* (1962) 2 AnWR 221. The learned Munsif Magistrate has himself observed that the certificate (Ex. P. 1) issued by the Deputy Commissioner was of the nature of a decree and that the proceedings for delivery u/s 87 of the H. R. and C. E. Act were akin to execution. But, he relied on the case of the Madras High Court in *S. Narayana Iyengar, Trustee of Sri Santhanagopalaswami Ranganathaswami Temple Vs. K.V. Desika Chariar*,

wherein it was held that a court proceeding u/s 78 of the old H. R. and C. E. Act had powers of enforcement under the Civil Procedure Code. The decision in that case proceeded on the basis that the Court proceeding u/s 78 was the Court of the District Judge which was a Civil Court and that, therefore, under the principles of law as laid down in various decisions including *National Telephone Co. Ltd. v. Postmaster General* 1913 AC 546 the provisions of the CPC applied, when a Civil Court was conducting proceedings. In the case referred to above, Viscount Haldane stated as follows:

"When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach. ..."

10. It was on an application of this very principle, held in the order in *Crl. R. C. No. 388 of 1960 (AP)* that as the authority who conducted proceedings u/s 87 of the H. R. and C. E. Act 1951, was a Magistrate that is, an inferior Criminal Court the procedure applicable for those proceedings was that of the Criminal Procedure Code as an ordinary incident of procedure of that Court. The learned Munsif Magistrate wrongly held that the CPC applied to proceedings u/s 87 of the Act because he failed to take into account the important fact that the Court which acts u/s 87 was an inferior Criminal Court, whereas the authority which acted u/s 78 of the old H. R. and C. E. Act, was the District Judge i.e., Civil Court. I agree with the contention of Shri Ramanujachari and hold that the CPC as such does not apply to proceedings u/s 87 of the H. R. and C.E. Act which are held by a Munsif Magistrate and that, therefore, Order 6, Rule 17 and Section 151 C. P. C., are not applicable.

11. Shri R. Veuugopala Reddy, learned counsel for the respondents, contends that the amendment was not one in substance but only one in form by way of adding a more correct description of the property which was the subject-matter of Ex. P. 1. I agree with the finding of the learned Munsif Magistrate that there is identity of the properties, whether described only by the old survey numbers and patta numbers as given in Ex. P. 2 and Ex. P. J. or by the new patta numbers and survey numbers, which are also shown in Ex. P. 3. Ex, P. 1 relates to certain items of property which are described therein by certain survey numbers. If the order were to be executed, that is, given effect to by the learned Munsif Magistrate without amendment, even then an order can be passed directing the property which is mentioned therein and as described therein. There is no dispute on this point. But, in giving effect to that order, the items of property will have to be identified and located precisely. For that purpose any change in number, that is, description which has come into effect as a result of the supplemental survey can be taken into account and delivery can be effected. The same result can be achieved if the court ordering delivery u/s 87 not only describes the properties to be delivered by the numbers as given in the Deputy Commissioner's certificate, Ex. P. 1, but also mentions the present description and numerical denomination which it bears by way of changed survey numbers,

so that there may not be any need for further enquiry or clarification at the time of actual delivery.

After all, if survey numbers of properties mentioned in the certificate have become different due to subsequent survey what has to be delivered in pursuance of the certificate is the particular items of property meant in the certificate whatever be its survey numbers (due to any change by supplemental survey) and not a different item of property, which happens to bear the particular survey number (due to supplemental survey). The mention of patta numbers and survey numbers is only a method of describing and identifying the property. The object of the order is to deliver the land. The description by survey numbers and patta numbers is only a means to an end, not an end in itself. The amendment which is asked for is not amendment in substance, but only an amendment in form and number which would include better and more complete description of the identical properties to ensure identification and facilitate delivery. So, it is possible to amend the schedule to the petition and pass an effective order u/s 87 based on Ex. P. 1 without actually amending Ex. P. 1. I do not agree with the contention of Sri Ramanujachari that delivery cannot be ordered without first amending Ex. P. 1. I also do not agree with the contention of Sri Ramanujachari that the Executive Officer must approach the Deputy Commissioner for amending Ex. P. 1 so as to show the new survey numbers and patta numbers and that only after such an amendment, can the Executive Officer ask for delivery on the basis of new survey numbers and patta numbers.

12. It is true that Order 6, Rule 17 C. P. C. makes a specific provision for amending pleadings and is applicable to civil proceedings. But, it cannot be said that amendment as an item of procedure was invented by the Civil Procedure Code. It only recognised the need for making amendments in civil proceedings and made a provision (Order 6, Rule 17) to fulfil that need. The principle of that section can be applicable to other provision as in the present case though Order 6 Rule 17 C. P. C. itself is not applicable directly just as the principle of res judicata is applicable to several cases to which Section 11 C. P. C. itself is not directly applicable. I find no need to doubt the correctness of the lower Court's order. I dismiss this petition.