
(1997) 07 AP CK 0023

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 2283 of 1997

Geda Veera Venkata Satyanarayana

APPELLANT

Vs

Geda Muneswara Rao

RESPONDENT

Date of Decision : 16-07-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152

Citation : (1997) 4 ALT 735 : (1997) 3 APLJ 75

Hon'ble Judges : V. Bhaskara Rao, J

Bench : Single Bench

Advocate : C.C.S. Sastry, for the Appellant; K. Sarvabhuma Rao, for the Respondent

Judgement

V. Bhaskara Rao, J.—The order in I.A. No. 2654/1996 on the file of Subordinate Judge, Kovvur, dated 22-4-1997 is challenged in this C.R.P.

2. The facts leading to this C.R.P. in brief are that the parties herein are brothers. The respondent filed a partition suit O.S. No. 8/1983 on the file of Subordinate Judge, Kovvur, in respect of the plaint schedule properties and ultimately the parties entered into a compromise and a decree in terms of the compromise was passed on 5-3-1991. The revision petitioner is the defendant therein. It is his case that some time later he came to know that some mistakes have crept into the compromise petition and the consequential decree and clarifications are necessary for enforcing the real spirit of the compromise. He accordingly styled this petition as an amendment petition and sought for amendment of compromise petition and plans Under Sections 151 and 152 of the Code of Civil Procedure. The petition is resisted by the respondent-plaintiff stating that the compromise was entered into long back and it has become final as the same is not challenged at any stage for over 5 years and that there is no error apparent on the face of the record and hence Sections 151 and 152 C.P.C. have no application. According to him he had to file another suit viz., O.S. No. 46/1991 against the revision petitioner in the District Court and that suit has been

decreed on merits on 31-10-1996 and this petition is meant for getting over the findings in O.S. No. 46/1991.

3. The learned Subordinate Judge considered the rival contentions and held that the decree passed in terms of the compromise on 5-3-1991 has become final and that the Court has no right to amend the compromise petition since it is not the order of the Court and since the compromise was filed by the parties themselves with their eyes wide open. It is further held that there is no error apparent on the face of the record and hence the provisions of Sections 151 and 152 C.P.C. will not apply. In that view of the matter, the petition has been dismissed. Thus, the defendant in O.S. No. 8/1983 is in this Court with this revision petition seeking necessary amendment or alternatively clarifications.

4. Sri CCS. Sastry, learned Counsel for the revision petitioner contended that as per Clause "g" of the compromise memo, the respondent-plaintiff had agreed to provide a Puntha of 51/2 yards width in R.S. No. 28/1 on its east along R.S. No. 28/2 starting from southern Puntha upto R.S. No. 29 as shown in Plan No. 1 as A.B.C.D. He stated that R.S. No. 28/1 was allotted to respondent-plaintiff while R.S. No. 28/2 was allotted to the petitioner-defendant and while so instead of leaving the said Puntha in R.S. No. 28/1, the respondent-plaintiff is treating A.B.C.D. portion as part of R.S.28/2 and thereby irreparable loss is being caused to the petitioner-defendant. Whereas Sri Sarvabhuma Rao learned Counsel for the respondent-plaintiff denied that the said Puntha was agreed to be carved out of R.S. No. 28/1 and he asserted that A.B.C.D. Puntha is itself R.S. No. 28/2 and there is no mistake or error apparent either in the compromise memo or the consequential decree.

5. The learned Counsel for the revision petitioner filed certified copies of the compromise memo, decree and relevant maps for perusal of this Court. To facilitate proper understanding of the above contentions, it is advisable to extract the relevant Clause "g" of the compromise memo hereunder.- ..

"The plaintiff hereby agrees to provide 51/2 yards width puntha in R.S. No. 28/1 along R.S. No. 28/2 on east starting from the southern puntha upto R.S. No. 29 as detailed in the Plan No. 1 appended herewith. The said puntha should be used by the defendant for the purpose of ingress and egress of his men, cattle, trucks, tractor and trailor, agricultural implements, carts etc., only from the southern puntha to his land in R.S.No. 29. The said puntha so set apart is shown as A.B.C.D. in the Plan 1 appended herewith. The plaintiff hereby agrees that he would not cause any hindrance for the exercise of defendant's said right of way through the said A.B.C.D. puntha at any time and he also hereby agrees that he would not interfere with the defendant's said right of way through the said right of way through A.B.C.D. puntha of the defendant should be exercised by him as an easement of express grant. The plaintiff can also enjoy the said ABCD puntha for his ingress and egress purposes of his men, cattle, carts, trucks, tractor and trailor, agricultural implements etc."

I carefully perused Clause "g" extracted above and considered the contentions of both sides. Undoubtedly the above clause shows that the respondent-plaintiff agreed to provide 51/2 yards width puntha in R.S. No. 28/1 along R.S. No. 28/2 and upto R.S. No. 29. The site on which the above puntha is to be provided is also specifically mentioned as "the eastern part of R.S. No. 28/1." Evidently it falls on the western side of R.S. No. 28/2. The difficulty appears to have arisen on account of R.S. No. 28/2 not being shown in the plan although A.B.C.D. is shown as part of R.S. No. 28/1. The intention of the parties is abundantly clear from the above clause of the compromise memo read with plan No. 1 that the said puntha is agreed to be provided in R.S. No. 28/1 and since it has fallen to the share of the respondent-plaintiff, he has to provide the same from out of his land in R.S. No. 28/1 for the benefit of the petitioner-defendant to whose share R.S. No. 28/2 is allotted. It can also be stated emphatically that the parties never intended to treat R.S. No. 28/2 as puntha within the four points A.B.C.D. shown in the plan. If the respondent-plaintiff started asserting that the puntha marked as A.B.C.D. falls in R.S. No. 28/2, it is contrary to the terms of Clause "g" extracted above. Even though the wording of the above clause is so very clear, the learned Subordinate Judge did not choose to sort out the matter and he thought it fit to approach to the matter in a technical manner stating that the Court has no power to amend the terms of the compromise. In fact, there is no necessity to amend the terms of the compromise or the compromise decree as a mere clarification would have probably served the purpose. In my view it would be enough to clarify the purport of Clause "g" as under:-

"The respondent-plaintiff agreed to provide a puntha in R.S. No. 28/1 which has fallen to his share with a width of 51/2 yards on its eastern side and that will run upto southern end of puntha in R.S. No. 29 and the same is marked as A.B.C.D. in the map and to its further east, R.S. No. 28/2 falls, The above puntha is therefore not agreed to be carved out of R.S. No. 28/2."

6. Sri Sastry adverted to Clauses "i" and "m" and sought for clarification that leaving the Kattavas in the boundary line A.D.E and F.L.K., the trees existing in the respective lands of the parties have to be enjoyed by the respective owners. I perused both these clauses with great care and caution and I find that the land covered by boundary Kattavas in existence between R.S. Nos. 28/1 and 28/2 on one hand and R.S. No. 29 on the other shown as A D E in the plaint plan No. 1 has fallen to the share of the respondent-plaintiff. Likewise, the land covered by Kattava in existence between R.S. Nos. 80 and 81 shown as F IX in plan No. 2 has also fallen to the share of respondent-plaintiff and the petitioner-defendant has given up his rights, share and claims in respect of the same. But the question is whether the land on either side of Kattava that has fallen to the either of the parties and the tress thereon are to be enjoyed by the respective parties or not. The clarification is that the respective parties to whom the said land has been allotted will be entitled to the trees existing in the respective lands.

7. Sri Sarvabhoudha Rao strenuously contended that the C.R.P. is not at all

maintainable in view of the Judgments in Kewal Krishan Vs. Shiv Kumar and Others, : Adinamyana v. Kothandaramayya, AIR 1940 Madras 538 and Chitturi Perraju and Another Vs. Yednapudi Venkamma and Others, .

In the Judgment cited supra (1), it is held-

"In order to set aside a consent decree on the ground that the consent was obtained by coercion, the proper remedy is to file a separate suit and not an appeal or an application for review against the decree or an application u/s 151 or Section 152 of the Code."

In the Judgment cited supra (2), it is held -

"Section 152 does not empower a Court to rectify a decree merely because that decree is wrong or unfair or because the parties have not realized their rights and put them before the Court in such a way as to enable a correct decree to be passed. The powers given under this Section only relate to arithmetical mistakes or errors arising from an accidental slip or omission. An apparent omission of an important term from a judgment proceeding on the consent of parties and sought to be amended 18 years after the passing of a consent decree cannot be regarded as an accidental slip in the absence of evidence of the rights and liabilities of the parties at the time the decree was passed."

In the judgment cited supra (3), it is held-

"A consent decree can be amended only by agreement between and consent of parties and cannot be corrected by the Court exercising its jurisdiction Under Sections 151 - 153, if it is a substantial correction that is sought. If, on the other hand, the correction is only of a clerical error, committed by a mutual mistake of parties in preparing their compromise petition there is no reason why it should not come within the purview of Section 152, Civil P.C. In that case, what the Court has to examine is whether it is a clerical error and whether it has crept into the record on account of a mutual mistake of both the parties to the compromise. When these requirements are satisfied, there is no doubt that the Court has jurisdiction to correct such an accidental error in the record."

It is true that a consent decree cannot be amended Under Sections 151 and 152 CPC except to the extent of correcting certain arithmetical mistakes or errors arising from an accidental slip or omission. Although the revision petitioners approached the lower Court seeking the amendments Under Sections 151 and 152 CPC, Sri Sastry, learned Counsel for the revision petitioners stated that in para 2 of the affidavit it is specifically averred that clarifications are required for enforcing the real spirit of the compromise. He, therefore, urged that this Court may dispose of the C.R.P. by making necessary clarifications on three clauses viz., "g", "i" and "m" and that this Court has every power to pass such an order for the purpose of complete and effective adjudication of the dispute. I carefully perused the affidavit of the revision petitioners filed in support of I.A. No. 2654/1996. It is true that clarifications or amendments are sought for. The

authorities cited by the learned Counsel for the respondent do not appear to lay down that no such clarifications can be issued if they are required for the purpose of proper and effective adjudication of the dispute between the parties. I am satisfied that the clarifications indicated above are necessary in the context in which the parties are agitated and since they are said to be litigating in one form or the other.

8. In the result, the C.R.P. is disposed of with the clarifications stated above. The parties will bear their respective costs.