

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2019

BEFORE

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

WRIT PETITION Nos.4455-4456/2018(GM-CPC)

BETWEEN:

B. MAHADEVIAIAH,
S/O LATE BASAPPA,
AGED 68 YEARS,
AGRICULTURIST GANIGARAPALYA
THALAGHATTAPURA POST,
UTTARAHALLI HOBLI
BANGALORE SOUTH TALUK-560 109.

... PETITIONER

(BY SRI H. R. ANANTHAKRISHNAMURTHY, ADVOCATE)

AND:

SMT. B S LEELAVATHI
SINCE DEAD BY HIR LR

B. S. NARAHARI (B.S.N. HARI)
S/O LATE B N SATHYANNA,
AGED ABOUT 62 YEARS,
R/AT NO.473, 9TH CROSS,
1ST CROSS, 1ST BLOCK,
JAYANAGAR, BANGALORE-560 011.

... RESPONDENT

(BY SMT. ANURADHA .S R., ADVOCATE FOR C/R)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 24.1.2018 PASSED ON I.A.NO.19 AND 20 IN O.S.NO.1455/2006 ON THE FILE OF PRINCIPAL SENIOR CIVIL JUDGE, BANGALORE RURAL DISTRICT, BANGALORE PRODUCED AS ANNEXURE-G.

THESE PETITIONS COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Heard the petitioner's counsel and respondent's counsel.

2. The order challenged in these writ petitions is at Annexure-G. The petitioner is plaintiff in the suit O.S.No.1455/2006 on the file of the Senior Civil Judge, Bengaluru Rural District, Bengaluru. The suit is for declaration of title of the plaintiff in respect of land bearing Sy.No.25 measuring 3 acres situated at Uttarahalli, Maanavarthekeval, Uttarahalli Hobli, Bengaluru South Taluk, Bengaluru District, and for other reliefs. It is the case of the plaintiff that in the sale deed executed by his vendor, the survey number of the land is wrongly shown as 26, but the

correct survey number is 25. This mistake occurred because of the wrong entries made in the revenue records. In the written statement filed by the defendant, according to the plaintiff, it is stated that the land belonging to defendant bears Sy. No.26/1 and not 25. This being the factual background, the plaintiff wanted to amend the plaint to state that due to mistake in the revenue records, the survey number of the land is mentioned as 26 in the plaintiff's sale deed. The plaintiff also wanted to seek another relief seeking direction to Muddu Veerappa, Muni Krishnappa, Muniyappa, Lakshminarayana and Ramachandra, all sons of late Muni Bathappa, for effecting rectification in the sale deed 18.10.1990. The plaintiff also wanted to implead these five persons by making application under Order I rule 10 of Code of Civil Procedure. The said applications were dismissed. Therefore, these writ petitions are filed.

3. Learned counsel for the petitioner argues that the mistake that has crept in the revenue records is admitted by

the defendant in the written statement. In view of this, it is necessary that the sale deed must be rectified for the purpose of mentioning the correct survey number as 25. This fact was necessary to be pleaded by amending the plaint and therefore, an application for amendment was filed. He also argues that persons who are required to effect rectification deed are to be impleaded and therefore another application was filed. In the set of circumstances, the Court should have allowed the application and permitted the plaintiff to amend the plaint and implead proposed defendants.

4. Learned counsel for the respondent submits that the Trial Court is justified in rejecting the application, as the suit is for declaration of title. In case, the plaintiff succeeds in the suit, he can obtain rectification deed, thereafter. At this stage, amendment is not necessary and presence of proposed defendants is also not necessary for effective disposal of the suit.

5. According to the plaintiff, the correct survey number of the land is 25 and not 26. There are some mistakes in the revenue records and this was the reason for wrong survey number being mentioned in the sale deed of the plaintiff. It appears that the defendant filed W.P.No.14458/2005 and in the said writ petition, it is stated that the land actually belonging to the petitioner-Smt.B.S.Leelavathi (defendant in the suit) is Sy.No.26/1 and not Sy.No.25.

6. Since the suit is for declaration of title to the effect that the land actually belonging to plaintiff bears Sy.No.25, I do not think that an amendment is necessary to be permitted. If at all the defendant has given an admission in the written statement and in the writ petition that the correct survey number of the land that she purchased was Sy.No.26/1, the Trial Court may consider it. The rectification of sale deed arises after the suit is disposed of. Even otherwise, once the plaintiff succeeds in the suit, he may produce the judgment

in the suit before the revenue authorities and seek rectification. This remedy being available to the plaintiff, the amendment sought to the plaint can not be permitted, it is not necessary also. The Trial Court is justified in dismissing the application. The writ petitions are therefore, ***dismissed.***

7. Since the counsel for the respondent expresses a fear that any observation made by this Court will come in the way of the disposal of the suit, it is made clear that the Trial Court shall not be influenced by any of the observations made here.

**Sd/-
JUDGE**

kcm