

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT: HYDERABAD

CORAM: *HON'BLE SRI JUSTICE K. LAKSHMAN

+ CIVIL REVISION PETITION No. 1288 OF 2023

% Delivered on:07-07-2023

Between:

Katanguri Sudhakar Reddy

.. Petitioner

Vs.

\$ Katanguri Rajender Reddy and others

.. Respondents

! For Petitioner

: Mr. M.Madhava Reddy
Ld.counsel

^ For Respondent No.1

: Mr.Ashok Reddy Kanathala
Ld.counsel

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? Cases Referred

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1. (1994) 6SCC 117

2. 2007 (6) ADJ 447

3. (1849) 4 Exch 187

4. AIR 1917 Cal 546

THE HONOURABLE SRI JUSTICE K.LAKSHMAN**CIVIL REVISION PETITION No.1288 OF 2023****ORDER:**

Heard Sri M.Madhava Reddy, learned counsel for the petitioner and Sri Ashok Reddy Kanathala, learned counsel appearing for 1st respondent. Respondents 2 to 15 are not necessary parties and the same is also mentioned by learned counsel for the petitioner in the cause title.

2. This Civil Revision Petition is filed to set aside the order dated 10.06.2021 passed in I.A.No.463 of 2013 in O.S.No.242 of 2008 by the Principal Senior Civil Judge, Warangal.

3. 1st respondent/plaintiff filed a suit vide O.S.No.242 of 2008 seeking partition and separate possession of the suit schedule property therein. During the pendency of the suit, 1st respondent/plaintiff filed I.A.No.463 of 2013 under Order XVI Rule 17 read with 151 of the Code of Civil Procedure, 1908 (for short, 'CPC') seeking permission to amend the plaint with regard to addition of lands covered in Sy.Nos.310, 311, 315, 240 and 241 of Regonda Village and also to carry out consequential amendments.

4. The said application was filed contending that apart from the suit schedule lands, the plaintiff and defendants have also succeeded

the lands in Sy.Nos.310, 311, 315, 240 and 241 of Regonda Village admeasuring Ac.17.07guntas situated at Regonda Village and Mandal, Warangal District. The petitioner herein/1st defendant, brother of plaintiff, looking after the said agricultural affairs. Therefore, the petitioner herein never enquired into the details of the said land at Regonda Village. Due to the said reasons, he has not included the aforesaid properties in the schedule of O.S.No.242 of 2008.

5. Whereas, the said application was opposed by the petitioner herein on the ground that he got the land to an extent of Ac.10.33guntas in Sy.No.240, 241, 312/B and 313 of Regonda Village, as per the family arrangement deed dated 28.05.1993 and the same is exclusively in possession of the petitioner herein and the same is also mutated in his name in the revenue records. The said family settlement deed is effected in 1993 itself. The plaintiff got his share in Regonda Village lands as per the family arrangement deed dated 28.05.1993. He sold the said land for his family necessities long back and he put his evil eye on the lands fallen to the share of 1st defendant and filed the present petition.

6. The Court below, vide order dated 10.02.2021 allowed the said application on the ground that the said lands in Sy.Nos. 310, 311

and 315 of Regonda Village, now sought to be added are not reflecting in Exs.R.1 to R.5 and even if it is done, no prejudice would be caused to the defendants. Moreover, it would be helpful to the parties to determine their rights finally. The Court below allowed the said application on imposition of costs of Rs.2,000/- and also on the condition of carrying out necessary amendments and filing of neat copy within two weeks from the date of the order, failing which, the said petition shall stand dismissed.

7. Feeling aggrieved by the said order dated 10.06.2021 in I.A.No.463 of 2013 in O.S.No.248 of 2008, the petitioner/defendant No.1 filed I.A.No.438 of 2021 to delete Sy.Nos.240 and 241 to an extent of Ac.8-17 guntas from the amendment carried out in the plaint since it is not in accordance with the orders passed in I.A.No.463 of 2013 dated 10.06.2021. Vide order dated 07.03.2022, the court below passed the following order in I.A.No.438 of 2021:-

Heard both. As per the order dated 10.06.2021, this Court allowed the amendment for inclusion of Sy.Nos.310, 311 and 315 but the learned counsel for the plaintiff inadvertently included the Sy.Nos. 240 and 241.

Hence, the plaintiff counsel is hereby directed to strike out Sy.Nos.340 and 341 in the amendment as well as neat copy of plaint.

8. Feeling aggrieved by the said order, the plaintiff filed revision vide CRP No.1164 of 2022. This Court vide order dated 29.08.2022 allowed the revision, setting aside the order passed in I.A.No.438 of 2021 in I.A.No.463 of 2013 in O.S.No.242 of 2008 passed by Principal Senior Civil Judge at Warangal. Liberty is granted to the defendant No.1 to challenge the orders passed in I.A.No.463 of 2013 if he is aggrieved of the said order.

9. In view of the said liberty, the petitioner herein filed the present revision challenging the order dated 10.06.2021 I.A.No.463 of 2013.

10. Sri M.Madhava Reddy, learned counsel for the petitioner would submit that the order dated 10.02.2021 in I.A.No.463 of 2013 is not on consideration of the actual facts as the Court below held that the lands covered by Sy.Nos.310, 311 and 315 are not reflecting in Exs.R.1 to R.5 and even it is done, no prejudice will be caused to the defendants. The said finding of the Court below is erroneous. The said fact was not considered by the Court below. However, petitioner/defendant No.1 filed I.A.No.438 of 2021 to delete Sy.Nos.240 and 241 to an extent of Ac.8.07gunts from the amendment carried out and the same was allowed. However, the said order was set

aside by this Court vide order dated 29.08.2022 in CRP No.1164 of 2022.

11. Sri Ashok Reddy Kanathala, learned counsel appearing for 1st respondent/plaintiff would submit that the Court below allowed the said application with costs of Rs.2,000/-, to carry out the necessary amendments and also to file neat copy of plaint within two weeks from the date of the orders failing which, the petition shall stand dismissed. 1st respondent/defendant received costs of Rs.2,000/-. Therefore, he is estopped from challenging the said order. He cannot receive costs without any resistance and challenge the said order. He has also placed reliance on the principle laid down by the Apex Court in **Bijendranath Srivastava (dead) through Legal Representatives Vs. Mayank Srivastava**¹.

12. In view of the said specific contentions raised by learned counsel for the 1st respondent/plaintiff, this Court, vide order dated 16.06.2023 directed Sri M.Madhava Reddy, learned counsel for the petitioner to get instructions with regard to receipt of costs of Rs.2,000/- by the petitioner. On obtaining instructions, he has informed this Court that the petitioner/D.1 received the said costs of Rs.2000/-.

¹ (1994) 6SCC 117

Learned counsel for the 1st respondent/plaintiff produced memo in proof of receipt of the said costs of Rs.2000/- by the learned counsel for the petitioner herein

13. The issue of challenging the order allowing the petition on payment of costs and receipt of costs is hit by doctrine of estoppel is no more *res integra*. Section 115 of the Indian Evidence Act, deals with estoppel which is as follows:-

When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

A legal principle that prevents someone from arguing something or asserting a right that contradicts what they previously said or agreed to by law. Estoppel prevents one person from contradicting an action or statement from the past.

14. In **Bijendranath Srivastava** (supra), the Apex Court categorically held as follows:-

The principle of estoppel which precludes a party from assailing an order allowing a petition subject to payment of costs where the other party has accepted the costs in pursuance of the said order applies only in those cases where the order is in the nature of a conditional order and payment of costs is a condition precedent to the petition being allowed. In such a case it is open

to the party not to accept the benefit of cost and thus avoid the consequence of being deprived of the right to challenge the order on merits. The said principle would not apply to a case where the direction for payment of costs is not a condition on which the petition is allowed and costs have been awarded independently in exercise of the discretionary power of the court to award costs because in such a case the party who has been awarded costs has no opportunity to waive his right to question the validity or correctness of the order.

15. In **M/s Mayur Packaging Industries Vs. U.P. State Financial Corporation, Noida**², the High Court relying on the principle laid down in **Bijendranath Srivastava** (supra), held that having received costs of Rs.2000/-, party is estopped from challenging the order therein.

16. In **Tinkler Vs.Hilder**³, English Court held that the defendants therein cannot adopt the order for one purpose and their claim to have its set aside for another purpose. The said principle was also reiterated by Calcutta High Court in **Banku Chandra Bose Vs. Marium Begum**⁴

17. Based upon the aforementioned judicial pronouncements, it is clear that the principle of estoppel applies only when the order is a conditional order and payment of costs is a condition precedent to allowing the petition. Further, an order cannot be adopted for one

² 2007 (6) ADJ 447

³ (1849) 4 Exch 187

⁴ AIR 1917 Cal 546

purpose and then challenged for another purpose. The order needs to be adopted as a whole. Once there is acceptance of costs, the same order cannot be challenged in appeal on different grounds. Also, if payment of costs is not conditional, then mere acceptance of costs will not deprive a person of his right to appeal. Thus, one is stopped from filing an appeal when the order is conditional in nature and payment of costs is a condition precedent to it.

18. In the present case also, the petitioner/defendant No.1 received costs imposed by the Court below while allowing the aforesaid application filed by the 1st respondent/plaintiff and it is conditional order. Having received the said costs of Rs.2,000/-, the petitioner herein is estopped from challenging the said order.

19. As discussed supra, vide order dated 29.08.2022 in C.R.P.No.1164 of 2022, this Court set aside order dated 07.03.2022 passed in I.A.No.438 of 2021 in I.A.No.463 of 2013 in O.S.No.242 of 2008 of learned Principal Senior Civil Judge, Warangal.

20. In the light of the above discussion, the present revision is devoid of merits and it is liable to be dismissed.

21. Accordingly, the Civil Revision Petition is dismissed. The suit is of the year 2008. Therefore, learned Principal Senior Civil

Judge, Hanumakonda is directed to dispose of the said suit in accordance with law within three months from the date of receipt of a copy of this order.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE K. LAKSHMAN

Date:07.07.2023

Note: L.R.copy to be marked.
b/o. vvr