

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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CIVIL REVISION PETITION No.4951 of 2015

ORDER:

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The 1st defendant/petitioner in IA.No.337 of 2015 in IA.No.401 of 2013 in OS.No.177 of 2013 on the file of the Court of the learned Principal Junior Civil Judge at Kothagudem brought this civil revision petition under Article 227 of the Constitution of India assailing the orders dated 18.09.2015 passed in the aforementioned interlocutory application.

2. I have heard the submissions of the learned counsel for the revision petitioner. I have perused the material record.

3. The facts, which are necessary and relevant for consideration, in brief, are as follows:

The 1st respondent herein had filed the suit for a perpetual injunction against the revision petitioner and another, who is the 2nd respondent herein. The 1st respondent had also filed an application in IA.No.401 of 2013 for grant of a temporary injunction. In that application, the 1st defendant/revision petitioner had filed the present IA.No.337 of 2015 seeking to appoint an advocate commissioner for noting down the physical features of the schedule property by way of a local investigation with reference to boundaries and with the help of a surveyor. The plaintiff, who is the 1st respondent in the aforementioned application of the revision petitioner, had resisted the said application by filing a counter. On merits, the trial Court had dismissed the application of the revision petitioner. Therefore, he is before this Court by way of this CRP.

4. Be it noted that the 1st respondent herein i.e., the plaintiff in the aforementioned suit had also filed the other suit-OS.No.242 of 2012 against the revision petitioner for recovery of possession. That suit is also being resisted by the revision petitioner herein. Another suit-OS.No.194 of 2013

was also filed by the 2nd respondent against the 1st respondent herein in respect of Ac.5.00 guntas of land. In OS.No.242 of 2012 filed by the 1st respondent herein for recovery of possession of Ac.4.27 guntas of land, other reliefs like recovery of damages were also claimed. As per the pleadings of the parties, there is *ad idem* insofar as the boundaries of the suit schedule property in OS.No.242 of 2012 and 177 of 2013 except in regard to the Western side boundary of the suit property in OS.No.177 of 2013. In OS.No.177 of 2013 the Western boundary of the said property was mentioned as PWD -Tummala Cheruvu road. The 1st respondent herein contends that there is no discrepancy in the boundaries. However, as per the revision petitioner, the boundaries of the subject properties are not one and the same, in view of the difference in the Western side boundary. Thus, there is a dispute also in regard to the boundary on the Western side apart from other issues. Be that as it may, the 1st respondent had already filed an application for appointment of an Advocate Commissioner and the trial Court while allowing the said application in IA.No.24 of 2014 in IA.No.451 of 2013 in OS.No.194 of 2013 had directed the Advocate Commissioner appointed to demarcate the petition schedule property with the help of a Mandal Surveyor Aswapuram Mandal and also with the help of the officials concerned of the Forest Department and prepare a sketch and file a report along with the Surveyor's report and plan. In spite of the fact that the Commissioner is already appointed for the aforementioned purpose by the trial Court, the revision petitioner herein seeks to appointment of a fresh Commissioner or to direct the Commissioner already appointed to note the physical features of the subject property with reference to the boundaries after investigation and with the help of a Surveyor.

5. In support of the said request, the case of the revision petitioner is that the 1st respondent had taken inconsistent and different stands in the two suits and that in one suit he had sought the relief of recovery of possession and that on the other hand in the other suit he had claimed that he is in possession and that the basis of his claim in respect of the property is also different in the two suits and that, therefore, it is necessary to demarcate the

suit land in OS.No.177 of 2013 and OS.No.242 of 2012 with reference to the boundaries mentioned in the sale agreement executed by one Galib in favour of his father in law. It is also further averred in support of the said request that the advocate Commissioner while doing the work with the help of a Surveyor has not served any notice and that unless the boundary dispute is resolved it is not possible to adjudicate the *lis* and give a quietus to the dispute once and for all.

6. The learned counsel for the revision petitioner would contend that in view of the fact that the 1st respondent herein had taken different and inconsistent stands in the two suits and that as there is a dispute about the Western boundary of the subject matter of property in OS.No.177 of 2013 it is necessary to note the physical features with reference to Western boundary as per the agreement of sale executed by Galib in favour of his father in law and that such an exercise is necessary for an effective adjudication of the controversy and that this aspect was also highlighted in the defence in the written statement in OS.No.177 of 2013 and that according to the revision petitioner, the 1st respondent herein made false allegations that the subject property of an extent of Ac.0.38 guntas in Sy.No.190/118; Ac.1.24 guntas in Sy.No.190/119; Ac.1.36 guntas in Sy.No.190/326; Ac.0.30 guntas in Sy.No.190/327 and Ac.1.15 guntas in Sy.No.190/105 makes out a total extent of Ac.4.27 guntas, but, those are old survey numbers and that the land is a single bit in one contiguous plot and that the Tahasil Office, Aswapuram Mandal mentioned the same survey numbers with by numbers as stated in paragraph 3 of the written statement filed in OS.No.177 of 2013 and that the trial Court had not properly appreciated the defence taken by the revision petitioner in OS.No.177 of 2013 and did not appreciate the necessity of appointment of a Commissioner for the purpose mentioned by the revision petitioner herein in his application and that the trial Court ought to have seen that the work that may be done by the Commissioner already appointed in the other proceeding is not going to sub-serve the ends of justice and that, therefore, the order impugned is liable to be set aside and that it is in the interests of justice to appoint an Advocate Commissioner as requested or

entrust a fresh warrant in this instant application to the same Commissioner for doing the work as requested in the application. The learned counsel also would point out that in the counter filed by the 1st respondent herein in IA.No.337 of 2015 it is stated that the 1st respondent has no objection to appoint an advocate commissioner to note down the physical features of the petition schedule property and conduct a survey and that the 1st respondent has no objection for entrusting this work also to Sri M.S.R. Ravichandra, who was already appointed as advocate commissioner in OS.No.194 of 2013.

7. I have gone through the material record. I have noted the submissions. I have given earnest consideration to the facts and the submissions. I have gone through the order, which is impugned.

8. The 1st respondent herein had filed the instant suit-OS.No.177 of 2013 for a perpetual injunction in respect of total Ac.4.27 guntas of land in four items as mentioned in the schedule within common boundaries. The 1st respondent had also filed an interlocutory application for grant of a temporary injunction. In that application, the present application is filed by the 1st defendant/revision petitioner to appoint an advocate commissioner only to note the physical features with reference to boundaries with the help of a surveyor. In between the parties there is another suit-OS.No.194 of 2013 filed by the 2nd respondent herein against the 1st respondent. In that suit in IA.No.24 of 2014 an advocate commissioner was already appointed and was entrusted with the warrant to demarcate the petition schedule property therein with the help of a Mandal Surveyor concerned and the officials concerned of the Forest Department and file a sketch and report along with the report and plan of the Surveyor. The warrant entrusted to the Commissioner is in respect of the total extent of land covered by the schedule of the plaint in an extent of Ac.5.00 cents i.e., Ac.3.26 guntas in Sy.No.198/2 and Ac.1.14 guntas in Sy.No.198/2 within common boundaries besides the schedule property of the defendant in an extent of Ac.4.27 guntas of land in four survey numbers in four items within common boundaries. Insofar as the present subject property, there is no dispute that the boundaries are *ad idem* except

insofar as the Western boundary, as already noted in the introductory part of this order. It is not in dispute that a Commissioner was already appointed in IA.No.24 of 2014 in OS.No.194 of 2013 and that in the warrant entrusted in the said application to the Commissioner he was directed to do comprehensive work of demarcating the petition schedule property in the said suit/application and prepare a sketch and file a report. Therefore, the work that would be done by the Commissioner already appointed would be sufficient to resolve the dispute and hence, another Commissioner need not be appointed and the same Commissioner need not also be entrusted with another fresh warrant as desired by the revision petitioner for doing the present work as requested in the application of the revision petitioner, in the well considered view of this Court, as the work already entrusted to the Commissioner already appointed takes in its ambit the purpose for which the revision petitioner is seeking the relief of appointment of Commissioner. The Commissioner, who was appointed to survey the property and demarcate the properties with the help of a Surveyor and file a sketch and report along with the report and sketch prepared by the Mandal Surveyor, is obliged, under law, while demarcating the property with the help of a Surveyor, to note down the topographical details of the subject properties and also the boundaries of the properties involved in the *lis*. Therefore, he would anyhow be doing the work of noting down the physical features as well as the boundaries of the properties involved in the *lis*. Therefore, appointment of a Commissioner for doing the same work or directing the Commissioner already appointed to do the work already entrusted is quite un-necessary. The learned counsel for the revision petitioner would submit that the Commissioner already appointed has not yet completed the work entrusted to him. Therefore, it is always open to the revision petitioner, if the revision petitioner has any apprehensions that the Commissioner may not note the boundaries of the properties, to serve a work memorandum on the Commissioner requesting him to note the boundaries while noting the physical features and doing the work of survey. Even though the revision petitioner is not a party to the suit in which the advocate commissioner was appointed, to avoid appointment of Commissioner once again, the revision petitioner is permitted to serve a work

memorandum on the learned advocate commissioner already appointed, if he so desires and if so advised, requesting him to note the boundaries while noting the physical features and doing the survey work which was already entrusted to him. In case any such memo is served, the Advocate Commissioner shall receive the same and do the needful in accordance with law. Suffice if it is observed that such a suggested course, if followed by the revision petitioner, the same would meet the requirement of the revision petitioner. It is needless to mention that the trial Court may consider the aspect of consolidation of all the suits on its file for conducting joint trial either *suo motu* or on the request of anyone of the interested parties, if the Court feels that such a course can be adopted in the suits.

9. Viewed thus, this Court finds that there is no need to appoint another Commissioner or entrust the warrant to the Commissioner already appointed to do the same work which is a part of the work already entrusted to the said Commissioner appointed in IA.No.24 of 2014 in OS.No.194 of 2013.

10. Having regard to the reasons, this Court finds that the Court below is justified in refusing to appoint a Commissioner or entrust the warrant to the same Commissioner for doing the same work which was a part of the work already entrusted to him.

11. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this CRP shall stand closed.

M. SEETHARAMA MURTI, J

27th November, 2015

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