

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.3266 of 2015

ORDER:

The plaintiff in O.S. No.295/2014 on the file of the Court of the learned Senior Civil Judge, Markapur, is the petitioner herein. She filed the said suit for specific performance of agreement of sale dated 15.03.2011. The respondent remained *ex parte*. After completion of the evidence of PW1, the petitioner filed I.A. No.486/2015 for appointment of an Advocate Commissioner for inspecting the suit schedule property and for fixing the boundaries with the help of Mandal Surveyor as per their F.M.B. plan. The said application was dismissed by the learned Senior Civil Judge, Markapur, by order dated 05.06.2015. Challenging the same, the present Civil Revision Petition was filed.

The petitioner filed the application stating that she has mentioned the correct boundaries in the plaint complying with the objections of the Court and though the defendant was served with the suit summons, he did not attend the Court. Thus, the boundaries mentioned by her are deemed to have been admitted. But, in the suit agreement of sale dated 15.03.2011, there are no boundaries and the absence of boundaries was noticed by her subsequently. Since the boundaries are not mentioned in the suit agreement and the petitioner mentioned the same in the plaint, for the purpose of fixing the boundaries of the suit schedule property with reference to the boundaries mentioned in the plaint, the petitioner prayed that it is just and essential to appoint an Advocate Commissioner for the purpose of verification of boundaries and fixing the boundaries with the help of Mandal Surveyor.

The lower Court dismissed the application in I.A.No.486/2015 holding as follows:

“The case of the petitioner is that she filed the main suit for specific performance of agreement of sale dated 15.03.2011. The respondent did not mention the boundaries in agreement of sale. Therefore, she filed the present petition for appointment of advocate/commissioner to fix up the boundaries. The respondent remained *ex parte* in the main

suit. The petitioner was examined as PW1 and got marked Ex.A1 to Ex.A3. When the matter has come up for further evidence, the petitioner filed the present petition for appointment of advocate/commissioner to fix up the boundaries. I have perused the Ex.A1, agreement of sale dated 15.03.2011. It does not contain boundaries. At the time of execution of Ex.A1, both parties had knowledge about boundaries. They should have mentioned the boundaries in Ex.A.1. Nobody knows why the boundaries were not mentioned in Ex.A1, agreement of sale dated 15.03.2011. The petitioner is not permitted to fix up the boundaries with the help of advocate/commissioner and mandal surveyor. If there is any mistake in any instrument, the instrument must be rectified by following process of law. In view of these reasons, I hold that the petitioner is not entitled for the relief as prayed for. The point is answered accordingly.”

Admittedly the agreement of sale dated 15.03.2011 does not contain any boundaries. In the absence of any boundaries mentioned in the agreement of sale, the petitioner cannot ask the help of Advocate Commissioner and Mandal Surveyor for fixing the boundaries. The petitioner stated the boundaries in the plaint and in the event of the suit being decreed, it is for the Court to execute the decree as per the boundaries mentioned in the plaint. In that view of the matter, this Court feels that the order in I.A. No.486/2015, passed by the lower Court on 05.06.2015, does not warrant any interference.

Accordingly, this Civil Revision Petition is dismissed. No order as to costs. The lower Court shall dispose of the main suit uninfluenced by the observations made in the present interlocutory application or in this order.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.RAMALINGESWARA RAO, J

22.12.2015

MVA