

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.4564 of 2015

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.05.08.2015 in I.A.No.757 of 2015 in O.S.No.146 of 2008 of the II Additional Junior Civil Judge, Warangal.

2. Petitioner herein is the plaintiff in the above suit. He filed the said suit for perpetual injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the plaint schedule property. He alleged that the respondents were trying to interfere with his enjoyment of the plaint schedule property which is located in survey No.181/A of Enumamula Village, Hanamkonda Mandal, Warangal District.

3. The respondents disputed the said contention and contended that by incorrectly showing the boundaries, the petitioner is trying to occupy their land which is in survey No.181/B.

4. In order to decide whether the plaint schedule property is located in survey No.181/A or 181/B since localization is required, the respondents filed I.A.No.757 of 2015 under XXVI Rule 9 CPC to appoint an Advocate-Commissioner to demarcate both survey numbers with the assistance of a Mandal Surveyor.

5. This application was opposed by the petitioner who took a plea that the survey records do not indicate any bifurcation of survey No.181 and it is Abadi land.

6. By order dt.05.08.2015, the Court below allowed the said application. It rejected the contention of the petitioner that land in survey No.181 was not bifurcated on the ground that the petitioner himself had stated that his land is located in survey No.181/A, which indicates that there is such a bifurcation. It also held that it is not the contention of the petitioner that other party had no land in survey No.181. It relied upon the judgment in ***T.Venkat Ramdev v. G.Arjun Reddy and others*** wherein

this Court has held that any amount of evidence that is adduced before the Court in connection with the controversies raised will not suffice to come to a conclusion with regard to localization, since concerned revenue authorities are proper persons to identify the properties taking necessary measurements.

7. Challenging the same this Revision is filed.

8. Counsel for the petitioner contended that appointing an Advocate-Commissioner in the facts and circumstances of the case amounts to collection of evidence and at the stage when evidence has not even commenced, Advocate-Commissioner cannot be appointed. He placed reliance on the judgments in ***Sajidunnisa v. Sukur Ali*** and ***Chekuri Lavanya v. Kalidindi Ravi Kumar Varma and others***.

9. A Division Bench of this Court in ***C.Veeranna v. C.Veakatachalam*** held that there is no bar for appointment of an ex parte Advocate-Commissioner even on the date of filing of the suit or before the trial commenced. This judgment has been followed in ***N.Savitramma and another v. B.Changa Reddy*** and also in ***Badana Mutyalu and another v. Palli Appalaraju***.

10. These precedents had not been noticed by the learned single Judge who decided ***Sajidunnisa's*** case(2 supra) wherein he had held that in a suit for injunction, an Advocate-Commissioner cannot be appointed and if it is done it would amount to permitting a party to gather evidence through an Advocate-Commissioner. The learned single Judge has also not noticed the judgment in [***Haryana Wakf Board v. Shanti Sarup and others***](#) wherein the Supreme Court held that if issues of demarcation are raised, even in injunction suits, an Advocate-Commissioner can be appointed under Order XXVI rule 9 CPC. Therefore, the decision in ***Sajidunnisa's*** case(2 supra) cannot be said to be good law.

11. In ***Badana Mutyalu's*** case(6 supra) this Court followed the judgment in ***C.Veeranna's case***(4 supra) and observed that in situations where parties are

neighbours and there is an allegation that property belonging to one party is being interfered by another party, it is incumbent upon the Court to decide where the disputed land is located and whether or not it forms part of the property claimed by the plaintiff and in such cases, an Advocate-Commissioner should be appointed normally. This principle squarely applies to the present case.

12. The evidence, as to whether the plaint schedule property is located in survey No.181/A or 181/B is of said peculiar nature that such evidence will be available only on the spot and so local investigation is the best way to find out the said fact.

12. In ***Chekuri Lavanya's*** case(3 supra) on the ground that application for appointment of Advocate-Commissioner is filed at a belated stage when the matter is posted for arguments, this Court held that the order of the trial Court cannot be sustained. In the present case such is not the situation and therefore, this judgment has no application.

13. So, I am of the opinion that the reasoning of the Court below in allowing I.A.No.194 of 2008 is unexceptionable and there is no error or infirmity warranting interference by this Court under Article 227 of the Constitution of India.

14. Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

15. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

30th October, 2015.

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