

***HON'BLE SRI JUSTICE R.KANTHA RAO**

CIVIL REVISION PETITION NO.1720 OF 2015

-
% Date:05.06.2015

Between:

Jammi Venkata Krishna Rao and three others

...Petitioners

And

\$ Jammi Venkata Hanuma Ravindranath

...Respondents

! Counsel for petitioners: Sri EVVS Ravi Kumar

^ Counsel for respondents: Sri TVS Prabhakar Rao

< **GIST:**

>HEAD NOTE:

? **Cases referred:**

HON'BLE SRI JUSTICE R. KANTHA RAO

CIVIL REVISION PETITION NO.1720 OF 2015

Date:05.06.2015

Between:

Jammi Venkata Krishna Rao and three others

...Petitioners

And

Jammi Venkata Hanuma Ravindranath

...Respondent

HON'BLE SRI JUSTICE R. KANTHA RAO

CIVIL REVISION PETITION NO.1720 OF 2015

ORDER:

This civil revision petition under Section 227 Constitution of India is directed against the order, dated 16.04.2015 passed by the Principal Junior Civil Judge, Peddapuram in I.A.No.717 of 2013 in O.S.No. 88 of 2013.

2. Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondent.

3. The respondent is the plaintiff before the trial Court. He filed the suit for bare injunction restraining the revision petitioners from interfering with the property i.e. red marked portion of the plaint sketch. It is mentioned in the plaint that the property earmarked fell to the share under a preliminary decree in O.S.No.32 of 1981 in respect of which a final decree was also passed on 19.08.1998. His version is that in the suit property originally there was a tiled house. Subsequently, it was dilapidated and in its place he wants to construct a slabbed house. It is stated that as the revision petitioners are trying to cause obstruction to the construction of the slabbed house and have been trying to interfere with the suit property, he filed the suit for injunction.

4. The revision petitioners-defendants filed the written statement stating that the earmarked portion in the plaint plan was never allotted to the respondent in the preliminary decree passed in O.S.No.32 of 1991 on the file of the Senior Civil Judge, Peddapuram and the respondent/plaintiff has no right to construct a slabbed house in the said property. According to the revision petitioners, the said property belongs to the trust and was never subject matter of partition between the parties. Thus, the version of the defendants is that the rough sketch filed along with the plaint is imaginary and the plaintiff has no right in the earmarked portion and that he was never in possession of the suit property.

5. In the said case, the respondent-plaintiff filed an application seeking appointment of Commissioner under Order XXVI Rule 9 of C.P.C. to note down the physical features of the suit property and the same was allowed by the trial Court. Feeling aggrieved, the defendants filed the present revision petition.

6. It is contended by the learned counsel appearing for the petitioners-defendants that the learned trial Court lost sight of the fact that the respondent filed the petition seeking appointment of commissioner only to gather the evidence and thus, went wrong in allowing the said petition.

7. On the other hand, the learned counsel appearing for the respondent-plaintiff would submit that in the earmarked portion of the property, there is a joint pathway and the petitioners have been making attempts to close the pathway and obliterate the physical features of the suit property which necessitated the respondent to file the petition seeking appointment of commissioner to note down the physical features.

8. Now the question that arises for consideration in the present revision is whether in a suit for bare injunction having regard to the aforementioned facts and circumstances, the trial Court is correct in appointing the commissioner to note down the physical features of the property.

9. From the contentions urged in the written statement, it is clear that the defendants are disputing the identity of the subject matter of the suit in which event the respondent-plaintiff has to establish the identity of the property by adducing oral and documentary evidence. The contention of the learned counsel appearing for the petitioners is that the facts which have to be established by the plaintiff by adducing oral and documentary evidence cannot be gathered from the report of the commissioner under the guise of noting down the physical features. It is true that the plaintiff has to establish the identity of the subject matter of the suit but when there is a dispute regarding the identity of the subject matter of the suit, noting down the physical features of the property enables the court to arrive at an appropriate decision regarding identity of the property and appointing the commissioner for that purpose will not amount to collecting or gathering

evidence. Moreover, in the instant case, the specific contention of the respondent-plaintiff is that the petitioners have been trying to obliterate the physical features of the property.

10. Learned counsel appearing for the revision petitioner submits that there is no averment in the plaint that the petitioner is going to change the physical features of the property. As to this, it can be said that even in respect of the event subsequent to filing of the suit, the Court can appoint the commissioner to note down the physical features.

11. As rightly held by the learned trial Court if the physical features are noted down by the commissioner, the subsequent obliteration can be known easily by the Court in the course of the trial. It enables the Court to understand the physical features of the suit property which existed as on the date of the filing of the suit which is very much essential to effectively adjudicate upon the issues in a suit for injunction.

12. For the aforementioned reasons, I am of the considered view that the trial Court did not commit any error in appointing the commissioner to note down the physical features of the schedule property requiring interference by this Court in revisional jurisdiction.

13. The revision petition is therefore dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, filed in this revision petition shall stand closed.

R.KANTHA RAO,J

Date:05.06.2015

-
Note:

L.R.copy to be marked.

B/O

ccm

HON'BLE SRI JUSTICE R. KANTHA RAO

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

CIVIL REVISION PETITION NO.1720 OF 2015

Date:05.06.2015

ccm