

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

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CIVIL REVISION PETITION No.328 of 2015

ORDER:

This Revision is filed challenging the order dated 14.07.2014 in I.A.No.454 of 2011 in I.A.No.234 of 2011 in O.S.No.44 of 2011 on the file of Junior Civil Judge, Kodangal.

2. The petitioners are the defendants in the suit. The said suit was filed by the respondent against the petitioners seeking perpetual injunction restraining the petitioners from interfering with the peaceful possession and enjoyment of the plaint schedule property. The plaint schedule property is said to be an extent of Ac.1.00 in Survey No.1665/AA/1 in Kosgi Village and Mandal of Mahabubnagar District within the boundaries specified therein. According to the respondent, he purchased the said property from the 1st petitioner herein. He alleged that on 23.07.2011 when he was proceeding with tying of barbed wire around the plaint schedule property, the petitioners tried to interfere with his possession of the property, removed boundary stones got fixed by him and with great difficulty he obstructed their illegal acts. So he

had to file the suit.

3. Written statement was filed by the petitioners contending that the land purchased by the respondent was, in fact, encroached by some third parties; that although the respondent tried to evict them he could not succeed; that as the 1st petitioner owns certain open land in Survey No.1665, taking advantage of the sale deed, the respondent is trying to occupy the open land of the 1st petitioner by force. It is also alleged that the Tahsildar, Kosgi knows that the land purchased by the respondent is not available.

4. Issues were framed and trial also commenced. It is stated that the evidence of PW1 is concluded.

5. At that stage, I.A.No.454 of 2011 was filed by the petitioners under Order 26 Rule 9 of CPC to appoint an Advocate Commissioner to inspect the suit schedule land and locate it in the map of Survey No.1665 at Kosgi Village with reference to the boundaries shown in the registered sale deed bearing document No.1239 of 1991 dated 08.07.1991 with the help of Mandal Surveyor.

6. It is the specific contention of the petitioners in the said application that the land sold by the 1st petitioner to the respondent is on the south-east corner of Survey No.1665 and is abutting the land in Survey No.1666, but

as per the boundaries mentioned in the plaint, the respondent is claiming the land which is in the middle of Survey No.1665.

7. This application was opposed by the respondent contending that if an Advocate Commissioner is appointed, it amounts to gathering of evidence by the petitioners.

8. By order dated 14.07.2014, the Court below dismissed the said application and held that if such an application is allowed, it would enable the petitioners to gather evidence.

9. Challenging the same, this revision is filed.

10. Learned counsel for the petitioners contended that the issue in the case concerns the location of the plaint schedule property and no amount of oral evidence can prove this fact. Since the evidence is of such a peculiar nature that it is available only on the ground, unless an Advocate Commissioner is appointed to localize the property, it would not be possible for the Court below to decide this issue.

11. Learned counsel for the respondent on the other hand supported the order passed by the Court below and contended that there is no error in the order passed by the Court below.

12. The stand of the respective parties has already set out above. From the contention raised by the respective parties, it is clear that the main issue in the suit is as to the location of the plaint schedule property i.e., whether the plaint schedule reflects the property which is described in the sale deed dated 08.07.1991 produced by the respondent, or whether the respondent is seeking to claim property different from the property covered by the sale deed.

13. In my considered opinion, this issue cannot be simply decided on the basis of the oral evidence adduced by both the parties. It requires localization by an Advocate Commissioner with the assistance of Mandal Surveyor. Since the evidence is of such peculiar nature, it is only available on the ground, no amount of oral evidence will help the Court in coming to a conclusion of this issue.

14. Therefore, I am of the opinion that the Court below is not right in dismissing the I.A.No.454 of 2011 filed by the petitioners for localizing the plaint schedule property.

15. Therefore, the Civil Revision Petition is allowed and the order dated 14.07.2014 in I.A.No.454 of 2011 in I.A.No.234 of 2011 in O.S.No.44 of 2011 is set aside. The said I.A. is allowed and the Court below is directed to appoint an Advocate Commissioner to inspect the suit

schedule land and locate it in the map of Survey No.1665 at Kosgi Village with reference to the boundaries given in the registered sale deed bearing document No.1239 of 1991 dated 08.07.1991 and to note down the physical features therein with the help of Mandal Surveyor. No costs.

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

M.S.RAMACHANDRA RAO,
J

June 17th, 2015.
ssp