

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

CIVIL REVISION PETITION Nos. 2174 of 2013, 72 and 167 of 2015

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COMMON ORDER:

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These three Revisions arose out of the same suit between the same parties and therefore they are being disposed of by this common order.

2. The 1st respondent in these Revisions filed O.S.No.203 of 2004 on the file of Principal Junior Civil Judge, Tadepalligudem against the petitioners and other respondents in the Revisions for recovery of possession of extent of land mentioned in the "B" schedule to the plaint after ejecting the petitioners and other respondents, for mesne profits and for costs.
3. According to 1st respondent/plaintiff, the petitioners and other respondents have encroached the "B" schedule property belonging to him and he is entitled to recover possession thereof with mesne profits.
4. Written statement was filed by petitioner Nos.1 and 2 opposing the suit claim and denying that they have encroached any property belonging to 1st respondent. It was specifically contended in the written statement that 1st petitioner's father by name Narayudu purchased 82 sq. yds. under registered sale deed dt.28-11-1928 in two items of which 1st item is 12 sq. yds. and 2nd item is 70 sq. yds.

It was also contended that on the same day, the vendor of K.Gangaraju sold 83 sq. yds. to Allu Pakheeru in two parts of 12

sq. yds., and 71 sq. yds.; and that 1st respondent and his father purchased from the son of Allu Pakheeru under a document dt.26-12-1975, an extent of 30 sq. yds. They alleged that a road was formed subsequently and by the time 1st respondent/plaintiff purchased from the son of Allu Pakheeru by document dt.23-03-1998 there remained only 41 sq. yds. of site and not 83 sq. yds.

5. An Advocate by name Ms. Anantha Lakshmi Kumari of Tadepalligudem was appointed as Advocate-Commissioner by the Court below in I.A.No.2890 of 2008 to inspect the suit locality, measure the property of respective properties as per their respective documents and note the encroachment, if any, with the assistance of Mandal Surveyor. Work memos were directed to be submitted to her by counsel for both sides. She submitted a report on 31-08-2009 to the Court below.
6. Thereafter trial commenced and evidence of both sides was concluded.
7. At that stage, the 2nd petitioner in these Revisions filed I.A.No.2829 of 2012 to cancel the report of the Advocate-Commissioner and to appoint another Advocate-Commissioner to execute the warrant. He contended that the Advocate-Commissioner had served a notice that she would visit the disputed property with the assistance of Mandal Surveyor on 25-07-2009 at about 9 a.m., but she informed at 3-45 p.m. on that day to their Advocate stating that she was at the disputed property for executing the warrant. They contended that they waited for 3 hours at the disputed property from 9 a.m. and left, and that after the Advocate-Commissioner

telephoned to their counsel, their counsel met her, gave her the work memos and also photocopies of the sale deed dt.28-11-1928. They contended that the Advocate-Commissioner ought to have measured the property of petitioners also with reference to the document provided to her and that her conduct in executing the warrant was not in accordance with law.

8. Counter affidavit was filed to the said application stating that the report of the Advocate-Commissioner is not liable to be scrapped and a second Advocate-Commissioner cannot be appointed. The

1st respondent contended that the conduct of petitioners estops them from filing the present application. It was also alleged that Advocate-Commissioner had given notice to both parties' Advocates before execution of the warrant and they were present and filed work memos. He contended that petitioners did not file any documents and suppressed their documents willfully before the Advocate-Commissioner and they also willfully absented during the Advocate-Commissioner's visit. It was stated that there was a delay in survey on account of the attendance of Mandal Surveyor; that objections to the Commissioner's report had been filed and the Court below had rejected the same by order dt.18-06-2012; and without filing any Revision Petition, they are not entitled to seek for setting aside of the Commissioner's report.

9. By order dt.06-02-2013, the Court below dismissed the said application. It held, after referring to the contention of petitioners that the document of the year 1928 was not taken into account, that the suit schedule property had totally changed in

comparison with the said document and since Advocate-Commissioner answered work memos filed by both parties and the plan filed indicates that the encroachment was marked in red colour, there was no necessity to measure the land with reference to the 1928 document.

10. Challenging the same, C.R.P.No.2174 of 2013 is filed.
11. Learned counsel for petitioners has placed before me the report dt.31-08-2009 of the Advocate-Commissioner. It disclosed that the Advocate-Commissioner referred to the work memos of either party and answered them. But instead of executing the warrant with the assistance of Mandal Surveyor of Tadepalligudem, the Advocate-Commissioner has simply relied upon the plans prepared by the Mandal Surveyor and opined that there is encroachment as per the Mandal Surveyor.
12. The duty of the Advocate-Commissioner is to execute the warrant with the assistance of Mandal Surveyor. This does not mean that the Advocate-Commissioner can delegate her duty to the Mandal Surveyor totally. Unfortunately this is what appears to have been done by the Advocate-Commissioner.
13. In this view of the matter, the report dt.31-08-2009 of the Advocate-Commissioner cannot be said to be a report in the eye of law since the Advocate-Commissioner appears to have outsourced her responsibility to the Mandal Surveyor.
14. Therefore, the order dt.06-02-2013 in I.A.No.2829 of 2012 in I.A.No.2890 of 2008 in O.S.No.203 of 2004 of the Principal Junior Civil Judge, Tadepalligudem is unsustainable.
15. Accordingly, C.R.P.No.2174 of 2013 is allowed and order

dt.06-02-2013 of the Principal Junior Civil Judge, Tadepalligudem in I.A.No.2829 of 2012 in I.A.No.2890 of 2008 in O.S.No.203 of 2004 is set aside and I.A.No.2829 of 2012 is allowed. No costs.

16. The Court below is directed to entrust the warrant pursuant to its order in I.A.No.2890 of 2008 to another Advocate-Commissioner; the new Advocate-Commissioner shall again visit the suit schedule property after giving notice to counsel of both sides; both parties are at liberty to submit work memos and documents to the new Advocate-Commissioner; and the said Advocate-Commissioner shall also take the assistance of Mandal Surveyor and inspect the locality, measure the properties of both sides as per their respective documents and note the encroachments, if any. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order.
17. After the Advocate-Commissioner's report is filed, both parties shall adduce evidence, if any, with reference to the said report and only thereafter, arguments in the suit shall be heard and the suit decided. In any event, this process shall be completed within a period of five (05) months from the date of receipt of a copy of this order. Learned counsel for both parties have assured that they will extend their full cooperation to the Court below in the expeditious disposal of the suit.
18. In view of the above order, no orders are required to be passed in C.R.P.Nos.72 of 2015 and 167 of 2015 and the said Revisions are closed. No costs.

19. As a sequel, miscellaneous petitions pending if any, in these Revisions, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 18-09-2015

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