

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3010 of 2015

ORDER:

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Aggrieved by the order dated 09.07.2015 passed in I.A.No.108 of 2015 in O.S.No.127 of 2009 on the file of the Principal Junior Civil Judge, Huzurabad, wherein an application for appointment of an advocate/commissioner was rejected, the defendant preferred the present Civil Revision Petition under Article 227 of the Constitution of India.

The facts in issue are as under:

The respondents/plaintiffs filed O.S.No.127 of 1999 seeking perpetual injunction against the petitioner/defendant. During pendency of the suit, the defendant filed a petition seeking appointment of an Advocate/Commissioner to survey and measure lands in Sy.Nos. 672/A and 672/B through Surveyor and to locate the suit land. The averments in the affidavit filed in support of the petition would show that the plaintiffs are claiming the property through a forged document insofar as the land in Sy.No.672/A is concerned and that they are interfering with the defendant's land in Sy.No.672/B. It is averred in the affidavit that the plaintiffs are not in possession of the suit schedule property and are misleading the Court by producing forged document. It is further averred that with an ulterior motive they are creating trouble to the defendant. It is said that identification/location of the suit schedule property is the crux of the problem and the plaintiffs ought to have take steps for survey of land to identify the suit land but did not take any steps for the same. Hence, the petition. After hearing both sides the learned Principal Junior Civil Judge dismissed the said petition. Challenging the same the present revision is filed.

The learned counsel for the petitioner/defendant would submit that there is a dispute with regard to the identity of the property, namely as to whether suit schedule property is situated in Sy.No.672/A or in Sy.No.672/B and hence it would be just and necessary to appoint an Advocate Commissioner to identify the property.

Learned counsel for the respondents/plaintiffs would submit that filing of this petition at a belated stage without any proper explanation is sufficient to dismiss the petition. It is further submitted that the petition seeking appointment of an Advocate-Commissioner is filed only to collect evidence which is impermissible under law.

In ***Velaga Narayana and others v. Bommakanti Srinivas and others*** a learned Single Judge of this Court held as under:

“Under Rule of Order 26 in any suit in which the Court deems a local investigation is necessary or proper for the purpose of elucidating any matter in dispute, it can issue a commission. Though issuing commission is discretionary, the Court has to exercise discretion in an appropriate and judicious manner. The purpose and object of location investigation under Rule 9 is to have the evidence from the spot itself to have a correct and proper understanding of the dispute between the parties. The local investigation report submitted by the commissioner enables the Court to make a correct assessment of evidence on record. When the Court is of the opinion that the material on record requires elucidation, it would be just and reasonable to issue a commission for the said purpose. A commission at the instance of one of the parties to find out as to who is in possession of the property cannot be issued as it enables the party seeking appointment of commissioner to collect or gather evidence. But, where there exists a dispute regarding suit property, the Court has to necessarily issue a commission with the assistance of a surveyor, otherwise, it would be highly difficult for the Court to completely and effectively resolve the dispute and issuing such commission would not amount to collection of evidence. Commission for the said purpose can be issued prior to or after the parties let in their evidence.”

From the judgment referred to above, it is clear that where there exists a dispute regarding suit property, appointment of Commissioner for the purpose of localizing the suit land is necessary.

Keeping in view the proposition laid down, it would be necessary to refer to few lines in the evidence of PW.1, which is as under:

“Chief examination: That myself and plaintiff No.2 are the own brothers and the plaintiff No.2 is my younger brother, we are the joint owners and possessors and in enjoyment of the house plot bearing Sy.No.672/A area 242 square yards and in Sy.No.672/A area 242 square yards, total extent 484 square yards, situated at Jammikunta Village and Mandal, proper of Karimnagar District. The suit plots are purchased by our father from it's real owner on 21.10.1968 for a valid consideration of Rs.350/-, after receiving the

sale consideration the vendor of our father executed a simple sale deed in favour of our father on 21.10.1968 and delivered possession by the vendor of our father. Due to love and affection over us our father gifted out the said suit plot equally to me and the plaintiff No.2 gifting 242 square yards each to us.”

“Cross examination: It is not true to suggest that my father and ourselves colluded and created fabricated and forged documents. I don’t know in partition Jagga Reddy got the property in Sy.No.672/A and defendant got in Sy.No.672/B and that the suit schedule property is actually located in Sy.No.672/B. No survey was got conducted in respect of suit property as already we are in possession. I don’t know whether we are ready for got surveying the schedule property to know it is in Sy.No.672/A or 672/B. It is not true to suggest that, as there is a dispute with regard to the title, this suit filed for permanent injunction alone is not maintainable. I don’t know whether any affidavit was obtained from Jagga Reddy.”

The evidence of PWs.2 and 3 is on the same lines of PW.1. From the evidence adduced by plaintiffs, it is clear that there exists some dispute with regard to location of plot in dispute. Any amount of evidence adduced before the Court may not be sufficient to come to a conclusion with regard to localization of the properties. Therefore, this Court is of the view that it would be just and necessary to appoint an Advocate/ Commissioner for location of the property in dispute, with the help of a local surveyor.

The counsel for the respondents would further submit that filing of the application at a belated stage is sufficient to dismiss the same. It is to be noted that application seeking appointment of Commissioner cannot be rejected on the ground of delay as the very identity of the property is under dispute. Further, it would be necessary to bring the said evidence of record for a just decision of the case. On the other hand, the docket entries filed by the petitioner would show that defendant’s evidence was closed on 24.03.2015 and the case was posted for arguments on 16.07.2015. But in view of the filing of C.R.P. nothing happened thereafter.

In ***Arvind Kumar Agarwal v. Legend Estates (P) Ltd.***, this Court held that appointment of Advocate Commissioner has to be made after adducing evidence and the same cannot be made at the threshold as it would lead to collecting evidence.

For the aforesaid reasons, the Civil Revision Petition is allowed and the order under challenge is set aside. There shall be no order as to costs.

The miscellaneous petitions, if any pending, in this Civil Revision Petition shall stand closed.

C. PRAVEEN KUMAR, J

29.10.2015

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