

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 904 OF 2014

ORDER:

This Revision has been filed challenging the order dated 27.1.2014 in I.A.No. 464 of 2013 in I.A.No. 66 of 2007 in O.S.No. 169 of 2006 of the Junior Civil Judge, Pakala, Chittoor District.

Heard Sri E.V.S.S. Acharyulu, counsel for petitioner and Sri Nimmagadda Satyanarayana, counsel for respondents 1 & 2.

Petitioner herein is the defendant in the suit. The suit was filed by the respondents 1 & 2/plaintiffs seeking perpetual injunction against the petitioner and the third respondent herein restraining them from interfering with the said properties. Pending suit, I.A.No. 317 of 2006 was filed by the respondents 1 and 2 on behalf of villagers of Moravapalli Village under Order 26 Rule 9 CPC for appointment of an Advocate Commissioner to note down the physical features. The same was allowed and the Court below appointed an Advocate Commissioner to note down the physical features in the presence of both parties and their respective advocates. The Advocate Commissioner filed a report but no objections have been filed to that report and the said I.A was closed on 18.7.2012.

Thereafter, the petitioner filed I.A.No. 66 of 2007 under Order 26 Rule 9 CPC to direct the Advocate Commissioner to revisit the suit property along with District Surveyor and locate plaint schedule properties and also patta lands of the petitioner in S.No. 1284/2,3,4 to an extent of Ac. 1-19 cents. This application was allowed on 8.4.2013 and the Advocate Commissioner was directed to revisit the suit schedule property with the assistance of the District Surveyor to note down the physical features and measure the petition schedule properties along with FMB.

Thereafter, it appears that the Advocate Commissioner visited the suit schedule property along with District Surveyor. But at the time

of such visit, the Advocate Commissioner was not allowed by the respondents 1 & 2/plaintiffs to measure the land in S.No. 1284/4. This fact is recorded by the Advocate Commissioner in his report filed before the Court.

In view of the said obstruction to the District Surveyor to survey and measure property as per the warrant issued in I.A.No. 66 of 2007 on 8.4.2013, the petitioner/first defendant filed I.A.No. 464 of 2013 seeking a fresh warrant to the Commissioner to survey the land in S.No. 1284/4 of Damalcheruvu Village and to locate the plaint "A" and "B" schedule property therein etc. This application was opposed by the respondents 1 & 2/plaintiffs.

By order dated 27.1.2014, I.A No. 464 of 2013 was dismissed on the sole ground that the petitioner/fist defendant had not filed any objections to the Commissioner's report. It held that the Court had already appointed an Advocate Commissioner twice for noting down the physical features for measuring the land with the help of District Surveyor. It held that the petitioner/first defendant now seeks to note down where A & B schedule properties are situated on eastern side or western side and also locate the plan marked road and street and this is impermissible.

Challenging the same, this Civil Revision Petition is filed.

Counsel for the petitioner submits that the respondents herein have not cooperated with the execution of the warrant by the Advocate Commissioner by objecting the District Surveyor measuring the land in S.No. 1284/4 of Damala Cheruvu Village and therefore, it is necessary to ask the Advocate Commissioner to revisit the subject property as sought by the petitioner in I.A.No. 464 of 2013.

Counsel for respondents 1 & 2 does not dispute the fact that his clients had not challenged the order dated 8.4.2013 in I.A.No. 66 of 2007. Without challenging the said order, it is not open to the respondents 1 & 2 to obstruct the Commissioner in the execution of the warrant. In fact it may amount to contempt of the lower Court and

willful disobedience of its order since the Advocate Commissioner is a representative of the Court.

Be that as it may, having regard to the fact that the Advocate Commissioner was prevented from executing the warrant, as per order dated 8.4.2013 in I.A.No. 66 of 2007, the Court below ought to have allowed I.A.No. 464 of 2013 and directed the Advocate Commissioner to locate the plaint schedule property and also patta lands of the petitioner and the third respondent in S.No. 1284/2,3,4. In my opinion, this does not amount to collection of evidence because the location of the subject property is of such peculiar nature that the evidence in regard thereto is available only on the ground and without report of an Advocate Commissioner on these points, merely on the basis of oral evidence, it is difficult for the trial court to adjudicate the suit. Therefore, the order dated 27.1.2014 in I.A.No. 464 of 2013 in I.A.NO. 66 of 2007 in O.S.No. 169 of 2006 of the Junior Civil Judge, Pakala is set aside and the said I.A.No. 464 of 2013 is allowed with costs of Rs. 500/- (Rupees Five Hundred Only) to be paid by respondents 1 and 2.

Accordingly, the Civil Revision Petition is allowed with costs.

As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02.06.2015

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