

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

C.R.P. No.4737 of 2014

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.21.11.2014 in I.A.No.1550 of 2014 in O.S.No.90 of 2011 of the Senior Civil Judge, Mangalagiri, Guntur dismissing the said application filed by the petitioner for appointment of an Advocate-Commissioner to localize the petitioner's property as well as the property of the respondents 1 and 2 with the assistance of respondents 10 and 11.

2. The petitioner herein is the plaintiff in the above suit. He filed the said suit seeking a declaration that he is the absolute owner of item No.1 of the plaint schedule properties, for a declaration that the judgment and decree in O.S.No.7 of 2005 of the Principal Senior Civil Judge, Guntur obtained by respondents 1 and 2 against respondents 6 to 8 does not relate to Item No.1 of the plaint schedule property and for a perpetual injunction restraining the respondents 1 to 5 from interfering with his peaceful possession of the item No.1 of the plaint schedule property.

3. It is the case of the petitioner that respondents 1 to 5 were unauthorizedly interfering with his possession and enjoyment of item No.1 of the plaint schedule property by violent means and were also tampering with the boundaries and physical features thereof. He also placed reliance on a report dt.19.01.2005 in Spl.R.C.No.A4/106/2004 issued to him by the 10th respondent.

4. Written statement was filed opposing the suit claim.

5. At that stage, Petitioner filed I.A.No.1550 of 2014 under Order XXVI Rule 9 CPC to appoint an Advocate-Commissioner to note down the physical features of his own property as well as the properties of respondents 1 and 2 with the assistance of respondents 10 and 11.

He alleged that it is necessary to localize item No.1 and fix the boundaries thereof as well as localize the properties of respondents 1 and 2. In the said application he also alleged that a portion of his property was acquired by National High Way Authority of India for the purpose of road widening, that the property of respondents 1 and 2 was also acquired partly and that this resulted in alteration of physical features and boundaries of both parties. He contended that, therefore, it is necessary to ascertain the boundaries of item No.1 of the plaint schedule property as well as the properties of respondents 1 and 2.

6. This application was opposed by respondents 1 to 4. They contended that the appointment of an Advocate-Commissioner is not necessary and that since the petitioner is not certain with regard to his property, the application may be dismissed. It is further contended that the respondents are very clear about the identity of their property and the petitioner had filed this application to drag on the proceedings, after he filed affidavit in lieu of his chief-examination.

7. By order dt.21.11.2014, the Court below dismissed the application. It extracted the contents of the affidavit filed by the petitioner and held that basing on the physical features of the plaint schedule property, dispute regarding title cannot be decided and that the petitioner failed to explain the relevancy of Advocate-Commissioner's report.

8. Challenging the same, this Revision is filed.

9. Heard Sri K.S.Murthy, counsel for the petitioner and Sri D.V.Chalapathi Rao, counsel for respondents 1, 3 and 4.

10. Counsel for the petitioner contended that the order passed by the Court below is bereft of reasons and that the Court below ought to have appreciated the contention of the petitioner that the respondents were interfering with his possession of item No.1 of the plaint schedule

property. He further contended that since a portion of property of the petitioner as well as respondents 1 and 2 had been acquired by National High Way Authority of India, it would be very difficult to ascertain the boundaries of petitioner's property and localize the property of respondents 1 and 2; and that, to decide the said issue in the suit ultimately, it is just and necessary to appoint an Advocate-Commissioner to identify his property as well as the property of respondents 1 and 2.

11. Counsel for the respondents on the other hand refuted the above contention and stated that the petitioner had not stated on what basis he wants the survey to be done; and the survey report dt.19.1.2005 on the basis of which the petitioner is making his claim, cannot be looked into for the said purpose. He further contended that the petitioner himself is not clear about the boundaries of his property and therefore the Court below had rightly rejected his application.

12. From the above contentions it is clear that petitioner is contending that he had purchased item No.1 of the plaint schedule property from the 9th defendant on 13.11.2006 and he is tracing his title through late Battula Sakuntamma who had purchased the property on 17.07.1969. The description of the property (including the boundaries) is given in the said document. The plaint schedule property also gives the boundaries of the property claimed by the petitioner. The grievance of the petitioner is that the respondents 1 to 5 are unauthorizedly interfering with item No.1 of the plaint schedule property by violent acts and were tampering with the identity of the boundaries and with the physical features therein.

13. The respondents dispute the title of the petitioner to item No.1 of the plaint schedule property and they are claiming title to the property under different documents. They claim that they are in possession of the property purchased by them.

14. Having regard to the tenor of the pleading of the respondents 1 to 3, it cannot be denied that they are disputing the claim of the petitioner in respect of item No.1 of the plaint schedule property. In the circumstances, there is a necessity to localize item No.1 of the plaint schedule property and also the property which is being claimed by the respondents 1 to 3.

15. The Hon'ble Supreme Court in ***Haryana Waqf Board vs. Shanti Sarup & Ors.*** ^[1] held that even in an injunction suit, if there is a necessity for demarcation of the disputed land, the Court can appoint an Advocate-Commissioner under Order XXVI Rule 9 CPC. Similar view has been taken by this Court in ***Badana Mutyalu and another v. Palli Appala Raju*** ^[2]

16. It is on account of the difficulty which has arisen on account of the acquisition of a portion of the properties of the petitioner as well as the respondents 1 and 2 for the purpose of road widening by the National High Way Authorities that it has become necessary to identify and localize the properties of the petitioner as well as respondents 1 and 2.

17. The Court below, in my opinion, is not correct in stating that there is no necessity to appoint an Advocate-Commissioner and that the relevancy of the report of the Advocate-Commissioner has not been explained by the petitioner. The object of local investigation under Order XXVI Rule 9 CPC is to collect evidence at the instance of the party who relies on the same and which evidence cannot be taken in Court but could be taken only from its peculiar nature, on the spot. This evidence will elucidate a point which may otherwise be left in doubt or ambiguity. Therefore, the order passed by the Court below cannot be sustained.

18. Accordingly, this Civil Revision Petition is allowed, setting aside the order dt.21.11.2014. Consequently, I.A.No.1550 of 2014 is allowed directing the Court below to appoint an Advocate-Commissioner to identify/fix boundaries to item No.1 of the plaint schedule property as well as the properties claimed by respondents 1 and 2 with the assistance of respondents 10 and 11. There shall be no order as to costs.

19. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

08th July, 2014

gra

[\[1\]](#) 2008 (8) SCC 671

[\[2\]](#) 2013(5) ALD 376