

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

C.R.P.No.3128 of 2012

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.20.03.2012 in I.A.No.268 of 2012 in O.S.No.479 of 2007 of the I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

2. The petitioners herein are plaintiffs in the above suit. The said suit was filed seeking perpetual injunction restraining the respondents from interfering with their alleged possession and enjoyment of plot Nos.37 and 38 admeasuring 200 sq. yards each in survey Nos.106 and 107 of Kothapet village, Uppal Mandal, Ranga Reddy District.

3. Pending suit, the respondents 1 and 2 filed I.A.No.39 of 2009 to appoint an Advocate-Commissioner to note down the physical features and to locate the suit schedule property and also land of an extent of Ac.2.08 guntas in survey No.109 of Kothapet village with the help of Mandal Surveyor.

4. Although this application was opposed by the petitioners, it was allowed on 27.04.2009 and the same was confirmed by this Court in CRP.No.3842 of 2009 on 29.10.2009.

5. It appears that the Mandal Surveyor, having visited the site along with the Advocate-Commissioner, expressed his inability to conduct survey on the ground that Tippans in respect of land in survey Nos.105, 108 and 109 of Kothapet village, Uppal Mandal are not tallying with the village map of Kothapet and requested the Advocate-Commissioner to conduct survey with the help of Office of Assistant Director of Survey and Land Records, Ranga Reddy District.

6. In view of the statement of Mandal Surveyor, the respondents 1 and 2 filed I.A.No.268 of 2012 seeking a direction to the Advocate-

Commissioner to execute the warrant issued in I.A.No.39 of 2009 with the assistance of officials of Office of the Assistant Director of Survey and Land Records, Ranga Reddy District and complete the commission work.

7. This application was opposed by the petitioners contending that originally a status quo order was granted in IA.No.571 of 2008 and questioning the same, they filed CMA.No.753 of 2009 and it was allowed on 19.10.2007 granting injunction in their favour, which was also confirmed in CRP.No.1356 of 2011. They contended that 1½ years after dismissal of CRP.No.3842 of 2009, the respondents have initiated the process for issuance of commission warrant. However, they did not deny that at the time of execution of warrant in July, 2011, the Mandal Surveyor was present and he expressed the view that the Tippans and the village map did not tally. They however denied that the Mandal Surveyor suggested that survey can be conducted only with the help of Assistant Director of Survey and Land Records. They insisted that only Mandal Surveyor should do the survey and not the Assistant Director as alleged. It is also contended that if now Advocate-Commissioner is directed to take help of the Assistant Director of Survey and Land Records, it amounts to seeking amendment of order in I.A.No.39 of 2009, which cannot be done.

8. By order dt.20.03.2012, the Court below allowed I.A.No.268 of 2012 rejecting the petitioners' objections. It observed that once the Mandal Surveyor expressed his inability to conduct survey, there is no option but to have the assistance of the Assistant Director of Survey and Land Records and it would not amount to making amendment of the order in I.A.No.39 of 2009.

9. Challenging the same, this Revision is filed.

10. Although, counsel for the petitioners sought to reiterate the

objections raised in the Court below and contended that the impugned order would amount to amending the order in I.A.No.39 of 2009, I am unable to agree with the said submissions.

11. No doubt, in I.A.No.39 of 2009, an Advocate-Commissioner was appointed to locate the suit schedule property with the assistance of the Mandal Surveyor and the petitioners having challenged the same in CRP.No.3842 of 2009, did not succeed. The Advocate-Commissioner and the Mandal Surveyor attempted to localize the land, but the Mandal Surveyor opined that in view of the mismatch between Tippans and village map, he is finding difficulty to conduct survey. When the same is not disputed by the petitioners, there is no option but to allow execution of the warrant of Commission by the Advocate-Commissioner by taking the assistance of the office of the Assistant Director of Survey and Land Records, Ranga Reddy District.

12. Even the order impugned in this Revision is passed only in furtherance of the execution of the warrant of Commission issued to the Advocate-Commissioner in I.A.No.39 of 2009 and it does not in any way interdict the same. It is also not open to the petitioners to insist that a Mandal Surveyor alone should do survey, when he has already expressed his inability to conduct the survey.

13. The further contention of the petitioners that the suit is of the year 2008 and this execution of warrant by the Advocate Commissioner is delaying the disposal of the suit, is also without any substance, because the delay was occasioned on account of the petitioners themselves challenging the order in I.A.No.39 of 2009 in CRP.No.3842 of 2009 and getting an interim stay on 22.09.2009, due to which the Advocate-Commissioner and the Mandal Surveyor did not proceed with the survey till August, 2011. But, it was ultimately vacated. Therefore, the respondents cannot be blamed for the delay

occasioned on account of the petitioners' actions.

14. So, I do not find any merit in this Civil Revision Petition and it is accordingly dismissed. There shall be no order as to costs.

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

M.S.RAMACHANDRA RAO, J

30th September, 2015.

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