

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

Civil Revision Petition No.1031 of 2015

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.04.02.2015 in I.A.No.1709 of 2014 in O.S.No.503 of 2010 of the Principal Junior Civil Judge, Vijayawada.

2. Petitioners herein are defendants 1 and 2 in the above suit. 1st respondent/plaintiff filed the said suit alleging that the petitioners encroached a portion of the 60 feet wide public road to the east of the plaint schedule property and he sought an injunction restraining the petitioners from using the said encroached area and also in respect of encroached portion on a drainage in front of the suit schedule property on the eastern side shown as 'ABCD' in the rough sketch.

3. Written statement was filed by the petitioners opposing suit claim.

4. The 2nd respondent/3rd defendant—Vijayawada Municipal Corporation filed written statement stating about the alleged encroachment on the drainage but its written statement was silent about the encroachment on 60 feet wide road.

5. After the trial concluded and matter was posted for arguments, the 1st respondent filed I.A.No.1709 of 2014 under Order XXVI Rule 9 CPC to appoint an Advocate-Commissioner to measure the width of the road situated on the eastern side of the houses of the petitioners and also to note down, whether the petitioners' houses were constructed encroaching the 60 feet wide road or not.

6. In the affidavit filed in support of the said application it was contended that PW2 had stated that she would produce the master plan; a notice under Order 21 Rule 8 CPC was also given to the 2nd respondent to produce the master plan or any plan regarding the 60 feet wide road which in existence on the eastern side of the petitioners' property, but the 2nd respondent did not produce it; and therefore an Advocate-Commissioner is required to be appointed for the above purpose.

7. Counter affidavit was filed by the petitioners contending that if an Advocate-Commissioner is appointed and is made to file a report on the point urged by the 1st respondent/plaintiff, it would amount to collection of evidence and the Court has to decide the same on the basis of the material available with the Court.

8. By order dt.04.02.2015, the court below allowed the said application. It held that material available with the Court is not sufficient to decide the issue of encroachment on road and the Court feels that the assistance of an Advocate-Commissioner is required to measure the road situated on the eastern side of the houses of the petitioners.

9. Challenging the same, this Revision is filed.

10. Heard Sri V.Subrahmanyam, Counsel for the petitioners and Sri V.S.R.Anjaneyulu, Counsel for the 1st respondent.

11. Although counsel for the petitioners contended that the Court below was not correct in appointing an Advocate-Commissioner after the arguments are closed and that too in an injunction suit, I am of the

opinion that the said contention cannot be accepted in view of the judgment of the Supreme Court in ***Haryana Waqf Board and others Vs. Shanti Sarup and Ors.*** The Supreme Court has held that even in an injunction suit, if there is a necessity for demarcation of the disputed land and there is an allegation of encroachment, Court can appoint an Advocate-Commissioner for the said purpose.

12. The 1st respondent had clearly alleged in the plaint that the petitioners had encroached 60 feet wide road to the eastern side of the petitioners' property. Although the petitioners denied the same, the written statement of the 2nd respondent-Vijayawada Municipal Corporation, is silent on that aspect.

13. When the Court itself is of the opinion that the issue cannot be decided on the basis of the material available on record and feels that it is necessary to appoint an Advocate-Commissioner for local investigation to ascertain the width of the road, no exception can be taken to it.

14. Therefore, I do not find any merits 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.

10th September, 2015

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