

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.3070 OF 2014

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.30.06.2014 in I.A.No.71 of 2014 in O.S.No.96 of 2008 of the Principal Junior Civil Judge, Bodhan.

2. The petitioner herein is the defendant in the above suit. The respondent/plaintiff filed the said suit for declaration of title and for perpetual injunction restraining the petitioner from interfering with his alleged possession and enjoyment of plot Nos.267 and 268 in survey No.115/1, 115/2 & 115/4 to an extent of 238 and 218 sq.yards of Gummudoor village of Mahbubabad Mandal, Warangal District.

3. The petitioner herein filed written statement alleging that the suit schedule property claimed by the respondent/plaintiff is in fact the property belonging to the petitioner in survey No.287/77 of an extent of Ac.0.25 guntas situated at Yetigadda Thanda of Gummudoor Village and by wrongly showing survey Nos.115/1, 115/2 and 115/4 the respondent is trying to grab the property. He further contended that he even got the land surveyed through Mandal Surveyor and as per the report of the said survey done through Assistant Director, Survey and Land Records, Warangal, the land claimed by the respondent/plaintiff falls in survey No.287/77 and not in survey Nos. 115/1, 115/2 and 115/4.

4. Pending suit, I.A.No.172 of 2008 was filed by the respondent under Order XXXIX Rules 1 and 2 CPC seeking an interim injunction against the petitioner.

5. Pending the said I.A., petitioner filed counter and also filed I.A.No.179 of 2008 therein under Order XXVI Rule 9 CPC to appoint an Advocate-Commissioner to ascertain the survey numbers, extents and boundaries to determine whether plaint schedule land forms part of survey No.287/77 as asserted by him or not.

6. By order dt.30.06.2008, the Court below dismissed I.A.No.179 of 2008.

7. Challenging the same, the petitioner filed CRP.No.3075 of 2008.

8. This Court by order dt.19.09.2008 dismissed the said Revision holding that after disposal of I.A.No.172 of 2008, the petitioner would be at liberty to file an application under Order XXVI Rule 9 CPC. However, no order was passed disposing of I.A.No.172 of 2008 by the Court below in spite of the specific mandate in Order XXXIX Rule 3(a) CPC to dispose of the same within one month and it kept the said I.A. pending and commenced trial of the suit.

9. The respondent then led evidence in the matter.

10. Since the I.A.No.172 of 2008 was not been disposed, the petitioner filed the present application I.A.No.71 of 2014 to appoint an Advocate-Commissioner to ascertain whether the suit schedule property forms part of survey No.278/77 or not.

11. The Court below dismissed the said I.A. by order dt.30.06.2014 stating that the respondent filed original sale deed and other link documents besides the oral evidence of PWs.1 to 3 with regard to the boundaries of the suit schedule property, whereas in the link documents filed by him, the petitioner had not filed any piece of

evidence to show that his property is situated within the boundaries as suit schedule property. It even went into the correctness of the claim of the petitioner who had pleaded that he obtained the property from his grand father-Banoth Sevy, who had in turn purchased the same under a sada unregistered sale deed dt.10.04.1962, which contained no boundaries and observed that it did not even contain any recital of delivery of possession. It observed that the map given by the Mandal Surveyor also did not disclose about the boundaries of the petitioner's property.

12. Challenging the same, this Revision is filed.

13. Counsel for the petitioner had contended that the reasons given by the Court below in refusing to appoint an Advocate-Commissioner are perverse and unsustainable and that it had erroneously placed burden on the petitioner to show that his property is situated within the boundaries of the suit schedule property. He further contended that it was not open to the Court below to go into the merits of the case of the petitioner while dealing with an application for appointment of Advocate-Commissioner to determine whether the suit schedule property is located in survey No.287/77 or in survey Nos. 115/1, 115/2 and 115/4.

14. Although, counsel for the respondent sought to support the order passed by the Court below, I find considerable force in the submission of the counsel for the petitioner.

15. From the facts narrated above, it is clear that petitioner is asserting that the suit schedule property forms part of survey No.287/77 at Yetigadda thanda, Gummudoor village, while the respondent is contending that the suit schedule property falls in survey Nos. 115/1, 115/2 and 115/4. This issue can only be resolved

if an Advocate-Commissioner is appointed to localise the suit schedule property with the assistance of a qualified surveyor, so that the location of the suit schedule property can be correctly determined i.e., whether it is part of survey No.287/77 or part of survey Nos. 115/1, 115/2 and 115/4 of Gummudoor village. The Court below was not right in going into the merits of the claim of the petitioner while deciding, whether or not to appoint an Advocate-Commissioner in these circumstances. The entire order of the Court below appears to be clearly perverse.

16. So, this Civil Revision Petition is allowed. Order dt.30.06.2014 in I.A.No.71 of 2014 in O.S.No.96 of 2008 of the Principal Junior Civil Judge, Mahabubabad is set aside and the said I.A. is allowed. The Court below is directed to appoint an Advocate-Commissioner to ascertain whether the suit schedule property forms part and parcel of survey No.287/77 or survey Nos. 115/1, 115/2 and 115/4 with the assistance of Mandal surveyor concerned. This exercise shall be concluded within a period of four (04) weeks from the date of receipt of a copy of this order. The Court below shall not proceed further in the matter till this exercise is completed. It shall also reopen the evidence of the petitioner and permit him to adduce evidence in the matter, after the Advocate-Commissioner's report is received. Only after the petitioner leads evidence in the suit, the Court below will decide the suit after hearing the arguments of both sides. There shall be no order as to costs.

17. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

11th September, 2015.

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