

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA

RAO

C.R.P.No.3424 OF 2015

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.04.05.2015 in I.A.No.16 of 2015 in O.S.No.1091 of 2010 of the Junior Civil Judge, Warangal.

2. Petitioner herein is the defendant in the above suit. The respondent/plaintiff filed the said suit for perpetual injunction restraining the petitioner from interfering with her alleged possession and enjoyment of the suit schedule property.

3. According to the respondent, the suit schedule property is an extent of 212 sq. yards in survey No.83 of Waddepally village of Hanamkonda Mandal, Warangal District; that the said property was purchased by her under registered sale deed dt.29.10.2009 and she was delivered vacant possession of the said property including a compound wall; that when she intended to raise construction in the open land, the petitioner, with the help of antisocial elements, entered into the property and tried to stop the works of the respondent.

4. Written statement was filed by the petitioner opposing the suit claim. He disputed the possession and enjoyment of the respondent over the suit schedule property. He contended that vendor of the respondent has no saleable

interest or right in the land in survey No.83. He alleged that he purchased 250 sq. yards in survey No.82(corresponding to old survey No.177) situated at Waddepally Village under a registered sale deed dt.20.06.1981, that since then he has been enjoying the said property and the respondent with a view to grab the property of the petitioner had filed the suit giving wrong boundaries and survey numbers.

5. Issues were framed. Trial also concluded and the matter stands posted for arguments.

6. At that stage, the respondent/plaintiff filed I.A.No.16 of 2015 under Order XXVI Rule 9 CPC contending that in view of the rival contentions of the parties, and admission of DW1 in his cross-examination that he had no objection for demarcation of the suit schedule property, she has been advised to file the application to appoint an Advocate-Commissioner to demarcate the suit schedule property with the help of Assistant Director, Survey and Land Records, Warangal and determine whether the suit schedule property is situated in survey No.82 or survey No.83 of Waddepally village.

7. Counter affidavit was filed by the petitioner opposing the said application contending that at the stage of arguments, this application cannot be maintained; that the respondent failed to prove her case by adducing oral evidence; that respondent had filed the present application with malafide

intention; and that appointment of Advocate-Commissioner is nothing but collection of evidence and is impermissible in law.

8. By order dt.04.05.2015 the Court below allowed the said application. It recorded the contentions of both parties and held that although evidence of both sides is completed and the suit is coming for arguments, since the petitioner, when he was examined as DW1, admitted that if the commissioner is appointed to know the exact survey number in which the disputed property is situated, he has no objection; and since there is a genuine dispute in relation to identification of suit schedule property, it is desirable to appoint an Advocate-Commissioner for localization of the suit schedule property with the help of Assistant Director, Survey and Land Records.

9. Challenging the same this Revision is filed.

10. Counsel for the petitioner contended that the Court below erred in appointing Advocate-Commissioner when the matter is posted for arguments, which amounts to collection of evidence and is impermissible. He further contended that in ***Sajidunnisa v. Sukur Ali***^[1] this Court has taken such a view. Even in that case also, there was a dispute about the location of the property in a particular survey number. This Court had held that by appointing an Advocate-Commissioner for ascertaining in which survey number the suit schedule

property is originally situated, the Court would be virtually abdicating its function and delegating its power to the Advocate-Commissioner.

11. Counsel for the respondent on the other hand refuted the above contention and supported the order passed by the Court below placing reliance on the judgment of this Court in ***Velaga Narayana and others v. Bommakanti Srinivas and other***^[2].

12. From the facts narrated above, it is clear that while the respondent alleges that the suit schedule property is in survey No.83 of the Waddepally village and pleads that she has title to it apart from possession, the petitioner is alleging that the suit schedule property is actually located in survey No.83 and it belongs to him. Thus, there is a clear dispute as to in which survey number the suit schedule property is located.

13. In ***Velaga Narayana***'s case(2 supra) this Court has held that if there is any difficulty in relation to the identity of the subject property in a suit, seeking appointment of Advocate-Commissioner for demarcating the land cannot be said to be fishing out evidence. It further held that Commission at the instance of one of the parties to find out as to who is in possession of the property cannot be issued, since it enables the party seeking appointment of Commissioner to collect or gather evidence. But, when there is a dispute existing regarding localization of the suit property, the Court has to

necessarily issue a Commission to localize the land with the assistance of the Surveyor. It observed that otherwise, it would be highly difficult for the Court to completely and effectively resolve the dispute.

14. In ***Bandaru Mutyalu and another v. Palli Appalaraju***^[3] this Court also has taken a view that if there is a controversy as to identification, location or measurement of the land in dispute in a suit, local investigation should be done.

15. It is clear that attention of the Court, which decided ***Sajidunnisa***'s case(1 supra), was not drawn to the judgments in ***Velaga Narayanai's case***(2 supra) and ***Bandaru Mutyalu's*** case(3 supra). Therefore, I am not inclined to follow the decision in ***Sajidunnisa***'s case(1 supra).

17. For the foregoing discussion, I am of the opinion that this Civil Revision Petition is without any merits and it is accordingly dismissed. There shall be no order as to costs.

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

M.S.RAMACHANDRA RAO, J

02nd September, 2015.

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[\[1\]](#) 2015(4) ALD 452

[\[2\]](#) 2014(4) ALT 152

[\[3\]](#) 2013(6) ALT 26