

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.508 of 2014

ORDER:

-
This Revision petition is filed challenging the order dated 21.01.2014 in I.A.No.1671 of 2013 in O.S.No.2251 of 2009 on the file of the I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad.

2. The petitioner herein is the plaintiff in the suit. He filed the suit for perpetual injunction restraining the respondents herein from interfering with his alleged peaceful possession and enjoyment of the suit schedule property.

3. The suit schedule property is described as a house bearing Municipal No.2-74/1 admeasuring 1000 sq. yards inclusive of a well with open place consisting of one room 10'x10' within specified boundaries.

4. The petitioner alleged that he inherited this property from his ancestors and that he is absolute owner and is in possession thereof. He stated that originally there was old structure, which was in dilapidated condition, as such he reconstructed a house and that the new house was given new municipal number indicated in the plaint schedule. He contended that the respondents, who have nothing to do with the property, are attempting to dispossess him for the suit property.

5. The respondents filed written statement opposing

the suit claim. They denied the possession and title of the petitioner to the suit schedule property and contended that one Dr.C.B.Srinivasa Rao and his brother Sri C.B.Namdev owned premises bearing No.2-1 of extent approximately 1800 sq. yards in the Grama Kantam of Chandanagar Village, Serilingampally Mandal, Ranga Reddy District; they divided this extent of 1800 sq. yards into seven plots and sold them; Plot No.6 admeasuring 271.7 sq. yards forming part of premises No.2-1 was sold to Sri T.L. Sulochana under a registered sale deed dated 25.10.1984 and she in turn sold the said plot to the 2nd respondent/1st defendant and another under a registered sale deed dated 11.02.1992; and that under a Release Deed dated 02.03.1998, the other person transferred his half share to the 2nd respondent. It is also stated that Plot No.5 admeasuring Ac.161.7 sq. yards forming part of premises No.2-1 was sold to one P.Rajendra Kumar under a registered sale deed dated 21.11.1984; he in turn sold the said plot to Sri P.Swarnalatha under a registered sale deed dated 03.08.1992; the said P.Swarnalatha in turn sold Plot No.5 to the 2nd respondent and another; and that the other party transferred his half share in Plot No.5 to the 2nd respondent under a Release Deed dated 02.03.1998. It is further stated that even in Plot No.7 admeasuring 655 sq. yards, the 2nd respondent obtained some extent of land and sold the same to respondent

Nos.1, 5 and 6. The respondents alleged that the petitioner had tried to dispossess respondent Nos.1, 5 and 6, who are in possession and enjoyment of the suit schedule property ever since the date of purchase under the guise of an ex parte order obtained in a suit, to which the petitioner and respondent Nos.2 to 4 are parties. They alleged that the petitioner is tried to grab the property of respondent Nos.1, 5 and 6.

6. According to the counsel for the petitioner, trial was concluded and the matter is posted for arguments.

7. At that stage, respondent No.1 filed I.A.No.1671 of 2013 under Order XXVI Rule 9 C.P.C. to appoint an Advocate Commissioner to note down the physical features of plot Nos.5, 6 and 7, which are being claimed as forming part and parcel of the suit schedule property by the petitioner and also to take measurements of the same with the adjacent plot Nos.1 to 4 with the help of surveyors.

8. In the affidavit filed in support of this application, respondent No.1 set out the same pleas as raised in the written statement and contended that the suit schedule property comprises of plot Nos.5, 6 and 7 admeasuring 1095 sq. yards, that they belong to the petitioner and respondent Nos.5 and 6, that the petitioner by set up a claim in respect of fictitious property bearing No.2-74/1 admeasuring 1000 sq. yards with the boundaries mentioned in the suit schedule, and such property does

not exist on the ground. It is specifically alleged that the petitioner is claiming plot Nos.5, 6 and 7 as if it is the suit schedule property and there is a serious dispute with regard to the identity of the property. It was contended that in order to resolve the issue about the identity of the suit schedule property, an Advocate Commissioner may be appointed to localize the suit property with the link sale deed dated 12.10.1984 and all the sale deeds of plot Nos.1 to 7 of the respondents.

9. This application was opposed by the petitioner stating that previously I.A.No.1075 of 1999 had been filed on 22.06.1999 and the same had not been pursued by the respondents and now they filed the application with similar relief. It is also stated that the suit had been numbered as O.S.No.338 of 1999 previously and the same was decreed in favour of the petitioner on 31.01.2005, but the said judgment had been set aside in A.S.No.66 of 2006 by the II Additional District Judge, Ranga Reddy, it was remanded to the trial Court and the matter was renumbered as O.S.No.2251 of 2009. It was also contended that at the stage when the case is posted for arguments, this application has been filed and since it is belated, it should be dismissed. He contended that parties are claiming different properties with different house numbers, extents and boundaries. He also contended that there is no ambiguity or mis-description in respect of the suit schedule property. He claimed that he

had obtained some certificates Exs.X.1 and X.2 from the municipal authorities which support his case.

10. By order dated 21.01.2014, the Court below allowed the said application holding that there is a dispute about the identification of the property and there is a necessity to identify the suit schedule property before deciding the issue as to who is in possession of the same. It observed that the application filed in 1999 was not by the 1st respondent but by respondent Nos.2 to 4 and if they did not pursue the said I.A., the petitioner cannot be penalised for it. It further observed that the measurements of plot Nos.1 to 4 are not necessary and only plot Nos.5 to 7 need to be measured and localized with the assistance of a Mandal Surveyor or a qualified surveyor.

11. Challenging the same, this Revision is filed.

12. Learned counsel for the petitioner contended that Advocate Commissioner cannot be appointed after the arguments in the suit and that in a suit for injunction an advocate commissioner cannot be appointed.

13. It is an admitted case that the suit had earlier been filed as O.S.No.338 of 1999 by the petitioner and although it was decreed on 31.01.2005, the judgment therein was set aside in A.S.No.66 of 2006 by the II Additional District Judge, Ranga Reddy and the matter was remanded to the trial Court and renumbered as O.S.No.2251 of 2009.

14. I.A.No.1075 of 1999 was no doubt filed on 22.06.1999 by respondent Nos.2 to 4 and they did not

pursue the same. This application was filed prior to the remand and admittedly respondent Nos.1, 5 and 6 have been impleaded subsequently. Therefore, the mere fact that respondent Nos.2 to 4 did not pursue the said application I.A.No.1025 of 1999 cannot come in the way of respondent No.1 from filing application for appointment of commissioner.

15. Learned counsel for the petitioner no doubt relied on the judgment in **Tappeta Eswaramma v. G. Nagabhusnama**^[1], wherein this Court set aside the order of the court below which appointed an Advocate Commissioner directing the Commissioner to measure the suit property and decide in which survey number the suit property is situated and held that the impugned order appears to be for collecting of evidence.

16. In **Haryana Wakf Board and others v. Shanti Sarup and other**^[2], the Hon'ble Supreme Court held that when there is a dispute about the identity and demarcation of the land, the trial Court shall appoint a local Commissioner even in an injunction suit. In **Bandana Mutyalu and another v. Palli Appalaraju**^[3], this Court had held that the local investigation is the best way to find out the position when there is controversy as to the identification or location or measurement of the land.

17. It is not disputed that in C.R.P.No.1201 of 2011 this

Court passed an order on 23.11.2011 between the same parties to this Revision, specifically giving a finding that there is a dispute with regard to the very identity of the suit schedule property.

18. In this view of the matter, I am of the opinion that the Court below was correct in appointing an Advocate Commissioner at the instance of respondent No.1. It may be that the matter is posted for arguments but when the Court below also feels that there is a need to identify the schedule property, no exception can be taken.

19. I do not find any error of jurisdiction in the order of the lower Court in allowing I.A.No.1671 of 2013.

20. Accordingly, the Revision is dismissed. No costs.

21. Miscellaneous Petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

1st September 2015

mar

[\[1\]](#) 2008 (6) ALD (NOC 79)

[\[2\]](#) 2009 (8) SCC 671

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