

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.1995 of 2015

ORDER:

This Civil Revision Petition is filed by the petitioner/defendant aggrieved by the order dated 13.04.2015 in I.A.No.61 of 2015 in O.S.No.52 of 2013 whereby and whereunder learned Principal Junior Civil Judge, Sompeta dismissed the petition filed by the petitioner to appoint an advocate commissioner to localize the plaint schedule property and adjacent property belonging to the petitioner.

2) The factual matrix of the case is thus:

a) Respondent/plaintiff filed O.S.No.52 of 2013 seeking permanent injunction against petitioner/defendant in respect of plaint schedule vacant house site. His case is that the plaint schedule property which was originally a tiled house was purchased by his late father—Voona Savarayya under a registered sale deed dated 17.05.1956 from one Jagannadha Rajamani Raj Deo and after his death plaintiff and his mother succeeded to the same. During the course of time the tiled house collapsed and suit property became a vacant site. When some third party tried to interfere with their possession and enjoyment they filed O.S.No.97 of 1985 and obtained decree which was confirmed in the second appeal before the High Court in S.A.No.125 of 1998. So also when one Khetriboro Behara threatened to interfere with the plaint schedule property the plaintiff obtained permanent injunction against him in O.S.No.53 of 2011. Now, the defendant who is the northern boundary owner of the plaint schedule property threatens to encroach into the plaint schedule property.

Hence the suit.

b) Petitioner/defendant in his written statement opposed the entire plaint allegations. His case is that plaintiff has no right, title or interest over the plaint schedule property at any time and hence the suit for mere injunction is not maintainable. Suit schedule measurements and description of the schedule are not correct. Originally the plaint schedule property belonged to one Ganesh Mahankado of Mandasa

and after his death his son—Doya Goudo sold the same to Khetriboro Behara under a registered sale deed dated 20.07.2011 and thereafter the said Khetriboro Behara sold it to one Doki Sankara Rao who is the son-in-law of plaintiff under a registered sale deed dated 04.09.2012 and hence the plaintiff is neither the owner nor in possession of the plaint schedule property but he suppressed the material facts and filed the suit.

c) Defendant's further case is that his house is to the North of the plaint schedule property. Originally the defendant's ancestors got the vacant site measuring East to West 200 feet and North to South 10 feet 3 inches in which a house was constructed in an area of East to West 95 feet and North to South 10.3 feet. The defendant succeeded the said house after the death of his grand father and father. While so, when the aforesaid Doki Sankara Rao and another tried to interfere with the construction of compound wall on the southern side of defendant's house, he filed O.S.No.49 of 2013 on the file of Principal Junior Civil Judge, Sompeta for permanent injunction. Defendant contended that plaintiff has nothing to do with his house and as a counter blast to O.S.No.49 of 2013 the present suit is filed and Doki Sankara Rao and Khetriboro Behara are necessary parties to the proceedings.

d) While so, the defendant filed I.A.No.61 of 2015 seeking appointment of a commissioner to localize the plaint schedule property and also its adjacent property belonging to him and to note the physical features and fix the measurements by fixing the boundaries of the plaint schedule property. By the impugned order the said petition was dismissed firstly, on the ground that petition was filed at the belated stage when the matter is coming up for arguments and secondly, appointing a commissioner for the purposes mentioned in the petition would amount to gathering evidence which is not permissible.

Hence the instant C.R.P.

3) Heard arguments of Sri M.M.Ali, learned counsel for petitioner and

Sri K.Manik Prabhu, learned counsel for respondent.

4) The argument on behalf of petitioner is that plaintiff is not the owner of suit schedule property and the sale deed through which the father of plaintiff allegedly purchased the suit property has in fact nothing to do with the plaint schedule property and the son-in-law of plaintiff purchased the plaint schedule property and the boundaries of schedule mentioned in the plaint schedule are not correct and when the son-in-law of plaintiff and another tried to interfere with the construction of the compound wall to the South of petitioner's house he filed O.S.No.49 of 2013 against them and obtained injunction, as a counter blast the plaintiff filed the present suit and if this suit is decreed it will nullify the decree that is going to be obtained by the petitioner in O.S.No.49 of 2013 and therefore, for a comprehensive understanding and just decision in the matter it is essential to appoint a commissioner to localize the plaint schedule property and the property of the petitioner which is to the North of the plaint schedule property and by fixing the boundaries of plaint schedule property. Learned counsel relied upon the decision of this Court reported in ***K. Dayanand v. P. Sampath Kumar***.

5) Per contra, learned counsel for respondent/plaintiff argued that plaintiff is the owner of the plaint schedule property and he is nothing to do with the suit—O.S.No.49 of 2013 allegedly filed by the petitioner against his son-in-law and another and the petitioner filed the instant petition with an ulterior motive to use the report in his suit and except for collection of evidence appointment of commissioner will not serve any useful purpose in the suit and hence the same is not maintainable. He relied upon the decision reported in ***Arredia Ram Reddy v. Arredia Allivelamma***.

6) In the light of above rival arguments, the point for determination is:
"Whether there are merits in the CRP to allow?"

7 a) **POINT**: Perused the record with reference to the respective arguments of both sides. It is a trite law that appointment of a commissioner is not confined to a particular circumstance. Depending upon the facts involved in that case the Court can appoint

a commissioner for better comprehension over the property involved in that case and for just decision in the matter. However, the decisions of various High Courts and Supreme Court which have been crystallized into a rule of law is that a commissioner cannot be appointed for collection of evidence to any particular party since depending on the burden of proof a party in a given case has to independently establish his right over a property to secure decree in his favour.

b) In the light of above thumb rule the case on hand has to be scrutinized. It is a suit for perpetual injunction simpliciter. The plaintiff claims title and possession over the suit property by virtue of registered sale deed dated 17.07.1956 through which his father allegedly purchased the suit property. Admittedly the defendant is the northern boundary owner of the plaint schedule property. Be that it may, the contention of defendant is that plaintiff is not at all the owner and possessor of plaint schedule property rather his son-in-law purchased the plaint schedule property from a third party under a registered sale deed and the plaint schedule measurements and description of the boundaries are not correct and in fact the present suit is filed by the plaintiff as a counter blast to the suit filed by the defendant against his son-in-law and another when they interfered with the construction of compound wall to the south of his house.

c) In the backdrop of above respective contentions, certainly the burden is on the plaintiff to prove his right, title and possession over the plaint schedule property on one hand and also to prove that the plaint schedule particulars like measurements and boundaries are also correct with reference to on ground status. In that view of the matter, seeking for appointment of a commissioner to measure not only the plaint schedule property but also its northern property which belongs to defendant is bereft of any logic. The apprehension of defendant is that if the plaintiff is granted a decree in the instant suit that will jeopardize his rights in the counter suit—O.S.No.49 of 2013. If that were the case, he ought to have requested the Court to conduct a common trial in both the matters and depending upon the feasibility the Court could have taken that exercise. So as rightly

argued by the respondent/plaintiff and so held by the trial Court, appointment of a commissioner will not serve any useful purpose except collection of evidence for the petitioner. Added to it, the petition was filed at a belated stage when the suit was coming up for arguments before the trial Court. So, in any view of the matter, I find no merits in the petition. The decisions cited by the petitioner/defendant will not help his cause.

8) In the result, this Civil Revision Petition is dismissed. No costs.

As a sequel, miscellaneous petitions, pending if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 07.10.2015

Murthy