

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

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C.R.P.No.4832 of 2014
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ORDER:

This Revision Petition is filed under Article 227 of the Constitution of India challenging the Order dt.05-11-2014 in I.A.No.146 of 2014 in O.S.No.43 of 2014 on the file of the Junior Civil Judge, Nandalur, Kadapa District.

2. Petitioner herein is the defendant in the above suit.

3. The respondent filed the said suit against the petitioner for declaration of his ownership in respect of the subject property and for relief of a mandatory injunction to demolish the compound wall allegedly constructed by the petitioner and also for delivery of the property.

4. It is the contention of the respondent that he purchased the property and that the petitioner who is the western boundary owner had encroached Ac.0.01 cent of the respondent's property on the western side and constructed a compound wall when the respondent was not there.

5. In the suit, respondent filed I.A.No.146 of 2014 under Order XXVI Rule 9 CPC to appoint an advocate-commissioner to measure the plaint schedule property with the help of Mandal Surveyor and to note down the encroachment made by the petitioner and its physical features.

6. Counter affidavit was filed by the petitioner contending that the copy of the registered sale deed supplied to the petitioner through process of the Court was not readable; that a memo dt.15-10-2014 had been filed by him to direct the respondent to supply readable copies of the documents to enable him to file a counter

but the same was not complied with by the respondent; that the respondent had not filed rough sketch of the property and did not mention measurements; and therefore the application is not maintainable.

7. By Order dt.05-11-2014, the Court below allowed I.A.No.146 of 2014. It held that the only defence taken in the counter of the petitioner was that the sale deed supplied by the respondent was not readable and there was no other ground taken; the petitioner had not denied about the boundaries mentioned in the petition and that since the allegations in the plaint indicate a possible encroachment by the petitioner of the property of the respondent, it is necessary to locate the actual encroachment, if any, by the petitioner.

8. Challenging the same, this Revision Petition is filed.

9. Heard Sri Ch.Janardhan Reddy, learned counsel for the petitioner, and Kum Nimmagadda Revathi, learned counsel, representing Sri Nimmagadda Satyanarayana, learned counsel for the respondent.

10. The main contention of the learned counsel for the petitioner is that in the plaint, the document under which the respondent purchased the property was said to be a registered sale deed dt.09-03-1990; along with the plaint, the respondent had filed a sale deed dt.29-03-1990; the contents of the said sale deed are not very clear and in spite of a request through Court to the respondent to furnish a readable copy of the said document, the same has not been furnished. It is his contention that without supply of a clear readable sale deed of the respondent, it is not possible to file a counter in the I.A. or Written Statement in the suit.

11. The learned counsel for the respondent on the other

hand contended that along with this Revision Petition, translation copy of the document dt.29-03-1990 (filed by the respondent) has been filed by the petitioner; that this indicates that the petitioner is able to read the contents of the sale deed dt.29-03-1990 filed by the respondent; that by over sight in the plaint, the date of the said document was mentioned as dt.09-03-1990 instead of 29-03-1990; and in any event, in the list of documents filed along with plaint, it is clearly mentioned that the document of title of the respondent is a sale deed

dt.29-03-1990. He also contended that having regard to the fact that the plaint allegations indicate that there is an encroachment by the petitioner of the property of the respondent, there is nothing wrong in the trial Court in appointing advocate-commissioner to locate the plaint schedule property and to note down the physical features with the assistance of a Mandal Surveyor and submit a report to the Court whether or not there is any encroachment made by the petitioner of the property of the respondent. She also placed reliance on this judgment in **Badana Mutyalu and another Vs. Palli Appalaraju**^[1].

12. I have noted the submissions of both sides.

13. It is not disputed that the petitioner herein is a neighbor of the respondent on the western side of the property of the respondent. The petitioner has not disputed the boundaries shown in the plaint schedule. His only objection to the application filed by the respondent for appointment of an advocate commissioner is that the contents of the document of title relied upon by the respondent are not readable. The petitioner along with this Revision has filed a translation of the sale deed dt.29-03-1990 filed by the respondent along with the plaint indicating the contents as well as boundaries. Therefore, it is difficult to accept

that the contents of the sale deed are not visible and that the petitioner has been put to any disadvantage. Assuming it to be so, it is always open to the petitioner to raise the said issue in the written statement to be filed in the suit by him. The petitioner has not specifically denied the allegation of the respondent that he has encroached Ac.0.01 cent of the respondent's land.

14. As regards the discrepancy between the body of the plaint and the document of title filed along with the plaint, with regard to the date of the document of the title of the respondent, the said point can certainly be canvassed by the petitioner in the written statement and also during his arguments in the suit. Of course it is permissible for the respondent to clarify by seeking amendment of the plaint or otherwise that there was typographical error in mentioning registered sale deed as 09-03-1990 instead of 29-03-1990. This issue as to the date of title deed of the respondent is not an issue which can be urged by the petitioner in the I.A. filed for appointment of an advocate-commissioner.

15. This Court has held in **Badana Mutyalu** (1 supra) that where there are disputes between neighbours and there is allegation that one of them encroached into the property of the other, the said issue can be decided promptly by appointing an advocate-commissioner to localize the plaint schedule property. This Court further held that local investigation is the best way to find out the position in situations where there is a controversy of identification of location or measurement of the land and that such local investigation may even be ordered *ex parte*.

16. Since the petitioner has not denied about the boundaries mentioned in the plaint or the fact that he is a neighbor to the respondent, and since the dispute in the suit is in regard to alleged encroachment by the petitioner of the property of the

respondent, I am of the opinion that the Court below has correctly allowed I.A.No.146 of 2014 and appointed an advocate commissioner to locate the plaint schedule property and note down the encroachment, if any, and physical features with the help of Mandal Surveyor. There is no error of jurisdiction committed by the Court below in allowing I.A.No.146 of 2014.

17. The Civil Revision Petition is without any merit and the same is accordingly dismissed. No costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date : 23-01-2015
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[\[1\]](#) 2013 (5) ALD 376