

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Civil Revision Petition No.4937 of 2014

Between:

Ramisetti Pedda Masenu

... Petitioner(s)

and

Bhavaraju Srinivasa Rao

... Respondent (s)

DATE OF JUDGMENT PRONOUNCED: ***03rd August, 2015.***

SUBMITTED FOR APPROVAL:

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

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| 1 | Whether Reporters of Local newspapers may
be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see
the fair copy of the Judgment? | Yes/No |

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**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

Civil Revision Petition No.4937 of 2014

ORDER :

This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, 1908 challenging the order dt.18.11.2014 in I.A.No.403 of 2014 in A.S.No.119 of 2012 of

the I Additional Senior Civil Judge, Kakinada.

2. The petitioner herein filed suit O.S.No.688 of 2005 before the II Additional Junior Civil Judge, Kakinada against the respondents for a perpetual injunction restraining the respondents from interfering with his alleged peaceful possession and enjoyment of the suit schedule property. It is said to be a house site plot admeasuring 280 sq.yards allegedly forming part of L.P.No.100/92 sanctioned by the Director of Town Planning. The petitioner claims to have purchased the said property under registered sale deed dt.09.11.1992 from his vendor and alleges that since then he is in possession and enjoyment of the said property.

3. Written statement was filed by the respondents opposing the claim and contending that the said lay out consists of several survey numbers and plot purchased by the petitioner falls in survey No.228/12 and vendor of the petitioner had no right to convey any land in that survey number to the petitioner.

4. The said suit was decreed on 29.07.2011.

5. Challenging the same, respondents filed A.S.No.119 of 2011 was filed before the I Additional Senior Civil Judge, Kakinada.

6. In the appeal, the respondents filed I.A.No.403 of 2014 under Order XXVI Rule 9 CPC seeking localization of the properties through an Advocate-Commissioner with the help of

revenue records by taking assistance of municipal and mandal surveyor and Electronic Total Station Survey Mission.

7. In the affidavit filed in support of the said application, it was contended that the plaint schedule property is part of their properties in survey Nos.228/12, 247/1, 248/2 which is part of L.P.NO.100/92 and vendor of the petitioner had nothing to do with it. They contended that if an Advocate Commissioner is appointed, it would help in clarifying that the plaint schedule property fell within the property belonging to their family and vendor of plaintiff/petitioner had no right, title or interest in it.

8. This application was opposed by the petitioner denying the contention of the respondents and pointing out that the respondents did not produce any paper with regard to their alleged title. A reference was also made to O.S.No.278 of 2005 filed by brother-in-law of the petitioner before the II Additional Junior civil Judge, Kakinanda, and appointment of an advocate commissioner in it, which became futile. It was contended that the respondent had made no counter claim in the suit and without doing so, an application to localize the properties cannot be maintained, particularly, when the suit filed by the petitioner was one for mere injunction.

9. By order dt.18.11.2014, the Court below allowed the said application. It held that although the suit is filed for perpetual injunction, the application for appointment of an Advocate Commissioner has been filed by the respondent not to note down the possession of the parties, but to localize the plaint

schedule property so as to know in which survey number the property is located. It held that there is a dispute between the parties with regard to the identity of the property, as according to the petitioner/appellant the suit plot is covered by survey No.228/12, while according to the respondent/plaintiff the suit plot is covered by survey No.228/10 and 11. It noted that no separate document was executed to show who contributed the land for layout and with regard to allotment of plots in the layout; and there was no possibility to know as to which plot in the layout was allotted to which owner. It held that therefore, there is a need to localize the property to know as to in which survey number the suit plot is covered. It also noted that in another suit O.S.No.1314 of 2006 an Advocate-Commissioner had been appointed and he identified the suit plot therein which also fell within L.P.No.100/92 of Suryaraopeta village. It followed the judgment in ***Velaga Narayana and others v. Bommakanti Srinivas and others***^[1], wherein this Court has held that an Advocate-Commissioner can be appointed in a suit for injunction to determine the identity of the property.

10. Challenging the same this Revision is filed.

11. Counsel for the petitioner contended that suit being one for mere injunction, at the appellate stage, an Advocate-Commissioner ought not to have been appointed by the lower Appellate Court and such an act would help the respondent to collect evidence and it is impermissible in law.

12. I am unable to agree with the said contention. In ***Haryana Waqf Board Vs. Shanti Sarup & Ors.***^[2] the Supreme Court held that if there is any necessity for demarcation of the disputed land, Court can appoint an Advocate-Commissioner even if it is an injunction suit. Similar view has been taken by this Court in ***Badana Mutyalu and Badana Laxminarayana v. Palli Appalaraju***^[3] and also in ***Velaga Narayana and others v. Bommakanti Srinivas and others***^[4].

13. Since the issue in this suit is whether the suit plot is covered by survey No.228/10 and 11 as contended by the petitioner or whether it is covered by survey No.228/12 which allegedly belongs to the family of respondents, it is necessary to localize the plaint schedule property to know in which survey number the suit plot falls.

14. Therefore, I am of the opinion that the lower appellate Court has not committed any error in allowing the I.A.No.403 of 2014 in A.S.No.119 of 2012.

15. So this Civil Revision Petition is dismissed. There shall be no order as to costs.

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

M.S.RAMACHANDRA RAO, J

03rd August, 2015.
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[\[1\]](#) 2014(4) ALT 152
[\[2\]](#) 2008(8) SCC 671
[\[3\]](#) 2013(5) ALD 376
[\[4\]](#) 2014(4) ALT 152