HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 28663 of 2011

ORDER:

Heard the learned counsel appearing for the petitioners, learned Government Pleader for respondents 1 to 4 and learned counsel appearing for the respondents 5 to 8. With the consent of both the parties, this Writ Petition is disposed of at the admission stage.

The present Writ Petition came to be filed seeking issuance of a writ of mandamus declaring the impugned action of the 4th respondent/Mandal Surveyor, Kakinada Rural in conducting the alleged survey of land to an extent of Ac.0.34 ½ cents as per documents and Ac.0.45 cents measurements on ground in Sy.No.199 of Thimmapuram village, Kakinada Rural Mandal along with the lands of respondents 5 to 8 and submitting his report dated 05.10.2011 resulting in the 3rd respondent/Tahasildar, Kakinada Rural Mandal, issuing endorsement No.B/1272/2011, dated 09.10.2011 in favour of the respondents 5 to 8 as illegal, arbitrary and violative of principles of natural justice and consequently set-aside the survey report of 4th respondent dated 05.10.2011 and the endorsement No.B/1272/2011, dated 09.10.2011 of the 3rd respondent and also to direct the 3rd and 4th

respondents to cause survey afresh after providing reasonable opportunity to the petitioners to present their papers and also participate in the survey proceedings.

The averments in the affidavit, filed in support of the writ petition, are as under :

The petitioners claim to be the absolute owners and possessors of property to an extent of Ac.0.34 ½ cents and Ac.0.45 cents of land in Survey No.199 of Thimmapuram village, Kakinada Rural Mandal, having acquired the same through their ancestors by virtue of sale deed No.99/1917 dated 03.02.1917. It is stated that on 13.07.1937 the entire property fell to the share of their ancestor by name Gangumalla Surya Rao through a partition list. After the death of said Surya Rao, the successors Gangumalla Subba Rao and his brother Gangumalla Veera Raju became the owners of the estate. It is further stated that by virtue of an oral partition the above said property fell to the share of Subbarao. A notarized Will dated 10.11.2000 came to be executed by Subba Rao while he was in sound and disposing state of mind, bequeathing the said property to the petitioners 3 and 4. While things stood thus, respondents 5 to 8, with an evil intention to grab the property tried to meddle with the bunds situated on southern side of their property. Their efforts to remove the bund was averted by the petitioners. Thereafter, O.S. No.708 of 2011 came to be

filed by the petitioners against the respondents 5 to 8 seeking injunction, which is still pending. It is further averred that respondents 5 to 8 made a representation before the Tahasildar, Kakinada Rural Mandal seeking assistance of the Mandal Surveyor for measurement of their property acquired by them vide Doc.Nos.1009/2011, 1010/2011, 1011/2011 and 1012/2011. The Mandal Surveyor issued a notice to the writ petitioners on 05.09.2011 informing about the application made by respondents 1 to 5 and the survey to be conducted. It is stated that on the date fixed, the Surveyor measured the entire land with the help of FMB and found the land in Survey Number was not sub-divided. At that juncture, the Surveyor informed that he would fix another date for survey basing on the documents and would inform the date of next survey depending on his convenience. It is stated that without giving any further information to the petitioners, the Mandal Surveyor conducted survey and basing on the said report the 3rd respondent issued an endorsement No.B/1272/2011 dated 09.10.2011. The impugned action of the 4th respondent, at the instance of respondents 5 to 8, in conducting the alleged survey and submitting a report dated 05.10.2011, resulting in the 3rd respondent issuing an endorsement No.B/1272/2011 dated 09.10.2011, is the subject matter of challenge in the present petition.

The only ground urged by the learned counsel for the petitioners is that the second survey was done behind the back of the petitioners and no notice was given to them inspite of assuring them of giving notice while conducting the first survey.

Relying upon the documents filed by the petitioners, the Government Pleader for Revenue submit that everything happened to the knowledge of the petitioners and as such it cannot be said that no notice was given to the petitioners.

It is to be noted that the writ petition was first listed on 24.10.2011 and the same was adjourned to 27.10.2011 and thereafter it was listed on 12.08.2015. Till date no notice has been ordered to un-official respondents. However, a perusal of the order dated 05.10.2011, which is subject matter of the challenge in the present writ petition, would disclose that on 09.09.2011 the Mandal Surveyor went to Thimmapuram village and inspected the land which was sought to be surveyed by the applicants. The extent of land was about Ac.31.75 cents as per the FMB and the land in said survey number was not subdivided. The applicants seem to have stated that the total extent of land held by them was Ac.2.25 cents. Basing on the document submitted by the parties, the Surveyor is alleged to have informed them that he would come back later after verifying the correctness of

the measurement mentioned in the said document. On 30.09.2011, the Mandal Surveyor, after informing all the neighbours, went to the said land; called one of the neighbours by name Gangumalla Arjuna Rao; told him that as per Doc.No.99/1917, one Bonda Somanna S/o. Bonda Tataiai is the owner of the land and asked them to show as to how the said land came into their possession from Bonda Somanna. It was informed to Surveyor that there was no document to show as to how they came into possession of the land from B.Somanna, but their grandfather by name Suryarao and Bonda Appalaraju S/o. Bonda Somanna executed an unregistered partition deed on 13.07.1937. To this he is said to have opined that the deed dated 13.07.1937 do not in anyway confer title on them. At that point of time, the elders from both the sides came there and as per their request the land which was sought to be in possession was measured and a detailed sketch was prepared. As the extent of the land shown in the document was correlating with the land in possession, the elders from both sides stated that the land to an extent of Ac.0.34 ½ cents devolved upon Gangumalla Arjunarao from Bonda Somanna through an unregistered partition deed. It was further mentioned in the endorsement dated 05.10.2011 that as per the two documents referred to above i.e., document No.99/17 and partition deed dated 13.07.1937, the land which is in

existence does not tally either with the boundaries or the extent. When the Surveyor called the elders of both sides and informed about the same, they stated that Gangumalla Arjunarao and others have got land admeasuring Ac.0.69 cents through an unregistered partition deed dated 13.07.1937 and out of the said property, the southern side half share i.e., Ac.0.34 ½ cents fell to their share through their grandfather-Gangumalla Suryarao. The half share in the third document, which belongs to Gangumalla Suryarao, is now in possession of another son by name Veeraraju and their children. Pursuant to a request made by the elders, Ac.0.34 ½ cents was demarcated. As per the detailed sketch-IV, measurements were made, boundaries were marked and shown to the applicants and Gangumalla Arjunarao. Thereafter, the elders of both sides told them that as per the boundaries fixed they will decide the issue. So saying, they sent away the Mandal Surveyor. The said information was furnished to the Tahasildar.

From the above, it is clear that the Surveyor went to the said place twice and to the knowledge of the elders and the neighbouring land owners marked the boundaries and later the elders sent him away. Though the names of the petitioners are not mentioned in the panchanama dated 05.10.2011, but definitely it refers to the presence of all the neighbours and also the elders of both the sides.

Hence, it cannot be said that the petitioners were not put to notice while conducting survey. The report submitted by the Mandal Surveyor was endorsed by the Tahsildar vide proceedings No.B/1272/2011 dated 09.10.2011.

Therefore, prima-facie it cannot be said that the said survey was done without the knowledge or notice of the writ petitioners. However, the petitioners are always at liberty to avail the remedy under the statute, in which event, the authority shall decide the same uninfluenced by the observations made in the present order.

With the above direction, the Writ Petition is disposed of. No order as to costs. As a sequel to it miscellaneous petitions, pending if any in this Writ Petition, shall stand closed.

C. PRAVEEN KUMAR, J

Date:05.10.2015
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