

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

C.R.P.No.2127 of 2015

ORDER:

The petitioners are defendants in O.S.No.13 of 2015 filed by the respondents/plaintiffs. The respondents filed the above suit on the file of the Senior Civil Judge, Nagarkurnool for permanent injunction in respect of three open plots bearing Nos.25 and 26 Part-1 & Part-2 admeasuring 230 square yards, 100 square yards and 130 square yards respectively, situated in Survey Nos.431 of Bijinepally Village and Mandal, Mahabubnagar District.

In the said suit, the defendants filed I.A.No.101 of 2015 in I.A.No.56 of 2015 seeking appointment of Advocate-Commissioner to fix the boundaries of land in Survey Nos.431 & 401 and also to fix the boundaries of respondents' plots, apart from fixing the boundaries of land in Survey No.401/18 in an extent of Ac.0.30 guntas.

The case of the petitioners is that the respondents filed I.A.No.56 of 2015 and obtained *ex parte* ad-interim injunction in their favour and started the construction of a house by encroaching the land of petitioners situated in Survey No.401/18 to an extent of 30 guntas. The said application was resisted by the respondents denying the title of petitioners in respect of Ac.0.30 guntas of land situated in Survey No.401/18.

The case of the respondents is that the father of the first petitioner sold away the land in Survey No.401/3 to an extent of Ac.0.30 guntas in favour of the Co-operative Housing Society Limited, Bijinepally, through registered sale deed on 12.11.1980. Similarly, the mother of the first petitioner also sold away her land in Survey No.401/3 to an extent of Ac.0.12 guntas in favour of the said society on the same day. Subsequently, the said society sold away the

purchased land situated in Survey Nos.401 and 431 to various plot owners and the plaintiffs are owners of plot Nos.25 and 26.

The respondents/plaintiffs further states that the petitioners not only asked for measuring the plots in Survey No.431 but also the land in Survey No.401/18, which is not the subject matter of the suit schedule and also the entire land in Survey Nos.431 and 401 whereunder the plot owners are also having title. Accordingly, they sought for dismissal of the application.

The trial Court considered the entire case and held as follows:

“Respondents herein filed suit for perpetual injunction in respect of particular property. It is for the petitioners/ plaintiffs to prove their possession over the suit property as on the date of filing of the suit. Naturally the burden squarely rests upon the petitioners of the injunction petition to prove his possession. The appointment of commissioner to note down the physical features does not serve any purpose in a suit for injunction. It is for the petitioners herein to look his own land by submitting application to the revenue authorities through Mandal Surveyor. But the petitioners cannot seek such relief through Court in an injunction petition. Therefore, mere location of the lands mentioned by the petitioners does not serve any purpose to decide an injunction petition in a suit for perpetual injunction. Therefore this Court holds that the appointment of the Court commissioner in this particular matter would serve no purpose. Therefore the petition has to be dismissed.”

A reading of the conclusion drawn by the trial Court makes it clear that the trial Court has not committed any error in coming to the conclusion that the petitioners cannot seek the relief as sought for by them through the process of Court in an injunction application filed by the respondents/plaintiffs. This Court sees no reason to interfere with the order passed by the trial Court.

Accordingly, the civil revision petition is dismissed at the stage of admission. This order will not prevent the petitioners from taking appropriate legal proceedings to establish their claim in respect of the land owned by them if it is encroached by anyone.

Miscellaneous Petitions, if any, pending in this revision shall stand closed. There shall be no order as to costs.

(A. **RAMALINGESWARA**
 RAO, J)

Date: 18.09.2015
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