

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.280 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.23.09.2014 in I.A.No.1271 of 2014 in O.S.No.294 of 2011 on the file of the Principal Junior Civil Judge, Eluru.

2. The petitioners herein are defendants in the above suit.

3. The respondent/plaintiff filed the suit against petitioners for declaration of his title to the plaint schedule property, and for a consequential permanent injunction restraining petitioners from interfering with respondents' peaceful possession and enjoyment of the plaint schedule property.

4. The plaint schedule property consists of an extent of Ac.0.23 cents out of Ac.0.62 cents in R.S.No.740/2 within the specified boundaries. It is the specific case of respondent that survey number R.S.No.740 was subdivided into 740/1 and 740/2; an extent of Ac.0.39 cents out of Ac.0.62 cents in Sy.No.740 is covered by road and the balance extent of Ac.0.23 cents is private land in respect of which a pattadar passbook was issued in favour of one Sesharatnam. According to him, the said

land is in Sy.No.740/2.

5. This fact was disputed by petitioners in the written statement filed by them. They contended that Sesharatnam had no properties at all and the plaint schedule property consisting of Ac.0.23 cents in R.S.No.740/2 is not in existence at all.

6. To resolve this controversy, the respondent filed I.A.No.1271 of 2014 to appoint a Mandal Surveyor or any suitable person to fix R.S.No.740/1 and 740/2 and to ascertain how much area R.S.No.740/2 is occupied by road, and also to fix the boundaries of the plaint schedule land of Ac.0.23 cents.

7. In the said application he contended that the total extent of R.S.No.740 was Ac.1.62 cents; after sub-division in R.S.No.740/1 Ac.1.00 fell and in R.S.No.740/2, Ac.0.62 cents fell; that the eastern boundary of R.S.No.740/2 is road; the petitioners were falsely contending that Ac.1.00 sold to Vadlapatla Anjamma extends up to the road on the East; that the said allegation is not true; therefore, it is necessary to determine the limits of R.S.No.740/1 and of the balance Ac.0.62 cents, and also to identify the land of Ac.0.23 cents allegedly purchased by respondent; that how much part of R.S.No.740/2 is lost is not known to the Revenue Authorities by occupation of the road; and therefore, a Mandal Surveyor be appointed.

8. This application was opposed by petitioners. They contended that there is no need and necessity to determine the limits of R.S.No.740/1; there is no land on the eastern side of R.S.No.740/1; and there is no R.S.No.740/2 at all in between R.S.No.740/1 and R & B road.

9. By order dt.23.09.2014, the Court below appointed an Advocate-Commissioner to identify the plaint schedule land and to fix boundaries thereof by taking the help of a Mandal Surveyor. It permitted the Mandal Surveyor to also refer to Revenue Records such as FMB, and directed him to issue notice to all parties.

10. Questioning the same, this Revision is filed.

11. The counsel for petitioners contended that the Court below erred in appointing an Advocate-Commissioner when the relief sought by respondent was only to appoint a Mandal Surveyor; therefore, the Court below went beyond the claim of respondent in I.A.No.1271 of 2014.

12. I am unable to agree with the said submission, because in the prayer in I.A.No.1271 of 2014 the respondents sought "either the appointment of a Mandal Surveyor or any suitable person". Therefore, the Court below had not acted beyond its jurisdiction to appoint an Advocate-Commissioner to survey with the help of Mandal

Surveyor.

13. The counsel for petitioner also contended that R.S.No.740/2 is not in existence and that the land claimed by respondent/plaintiff does not exist at all. This is a matter for evidence and to assist the Court in coming to conclusion on this aspect, it is necessary to fix R.S.No.740/1 and 740/2 and to ascertain how much area in R.S.No.740/2 is occupied by the road.

14. Therefore, in my opinion, the order for appointment of an Advocate-Commissioner by the Court below to take assistance of the Mandal Surveyor to identify the plaint schedule property and fix the boundaries thereof, cannot be found fault with.

15. Therefore, I see no merit in the Revision and it is accordingly dismissed. No order as to costs.

16. The interim order granted on 22.04.2015 shall stand vacated.

17. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-06-2015

Ndr/*