

HONOURABLE SRI JUSTICE S.RAVI KUMAR

CIVIL REVISION PETITION No.2187 OF 2015

Dated 1-10-2015

Between:

Supari Vittal.

..Petitioner.

And:

Jeethappa and others.

..Respondents.

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HONOURABLE SRI JUSTICE S.RAVI KUMAR

CIVIL REVISION PETITION No.2187 OF 2015

ORDER:

This revision is preferred aggrieved by the orders of Junior Civil Judge, Narayankhed dated 21-4-2015 in I.A.No.8 of 2015 in O.S.No.19 of 2010 whereunder, trial court dismissed application filed by revision petitioner herein for appointment of commissioner to survey the suit schedule property and demarcate boundaries.

Petitioner herein is plaintiff and he filed the suit for declaration that he is absolute owner of agricultural land bearing survey Number 40/AA measuring Ac.4-19 Guntas situated at Chowkanapally village, Kangti Mandal, Medak District and to direct the defendants to hand over plaint 'A' schedule property to the plaintiff and to restrain defendants from interfering with plaint 'B' schedule property situated at Chowkanapally village, Kangti Mandal, Medak District and to conduct survey and demarcate the suit 'A and B' schedule properties and fix up boundary stones and to direct defendants to pay mesne profits at Rs.5,000/- per annum from 2010-2011 onwards.

Petitioner herein filed above referred I.A. contending that father of plaintiff purchased land admeasuring Ac.12.13 guntas in S.No.40/AA and D.1 and D.2 purchased land admeasuring Ac.11.12 guntas in S.No.40/A and the father of D.3 and D.4 purchased land of Ac.12.13 guntas in S.No.40/E of Chowkanapally village, Kangti Mandal, Medak District sixty years back and that the respondents 1 and 2 have

encroached on A schedule property and as such, he filed suit for recovery of possession and also for declaration of title for entire A and B schedule property.

It is further contended that advocate Commissioner has to be appointed to measure and demark the suit schedule land basing on the possession held by the petitioner to know actual encroachment made by respondents 1 and 2.

Respondents opposed the petition and filed counter, contending that at this stage advocate commissioner cannot be appointed to demark suit land and as such, appointment would put the respondents to irreparable loss which cannot be compensated in terms of money. Considering the contentions and rival contentions of both parties, learned trial judge dismissed the application accepting the objection of the respondents and further held that the appointment of commissioner would amount to collection of evidence which cannot be permitted under law.

Heard both sides.

Advocate for revision petitioner submitted that trial court erred in holding that present application for appointment of commissioner would amount to collection of evidence. According to revision petitioner, in view of specific prayer in the plaint seeking survey and demarcation of the suit schedule land i.e., plaint A and B schedule properties. It is necessary to appoint an advocate commissioner. He submitted that the land originally belonged to one Gundappa and plaintiff and defendants purchased from the said Gundappa. He further submitted that plaintiff purchased Ac.12.13 guntas and his survey number is 40/AA. D.1 and D.2 purchased Ac.11.12 guntas and their survey Number is 40/A and father of plaintiff purchased Ac.12.13 guntas and their survey number is 40/E, and unless the land is demarcated by way of survey, it is difficult even for the court below to appreciate the evidence of parties. He further submitted that even in the written statement, defendants have not specifically denied plea of survey and demarcation as prayed under S.No.5 of the plaint prayer. He further submitted that trial court erred in dismissing the application and the same is to be set aside.

On the other hand, learned counsel for respondents submitted that now the suit is at the stage of recording evidence and at this stage, the question of survey or demarcation does not arise and only after completion of evidence and if the court feels that there is any necessity of demarcation, then only advocate commissioner can be appointed and therefore, the trial court is right in dismissing the application. He further submitted that by measuring land of plaintiff alone, issue will not be solved and the entire land i.e., land of

defendants should also be measured, then only correct picture can be placed before the court for appreciation of evidence.

I have perused the material papers including copy of plaint and copy of written statement. In the plaint, a specific prayer is made to conduct survey and demarcate 'A and B' schedule properties. Plaintiff sought appointment of commissioner in pursuance of the said prayer. When such a specific prayer is made, there is no specific denial in the written statement disputing such prayer.

As seen from the written statement, defendants also contended that land originally belonged to one Gundappa and total extent owned by the said Gundappa was Ac.35.38 guntas both plaintiff and D.1 to D.4 purchased property from said Gundappa only and according to plaintiff, they purchased Ac.12.13 gutnas in S.No.40/AA. From the pleadings of both parties, it is clear that at the time of purchase also, there was no survey and land was not measured as per the sale deed.

Now considering the material on record, I feel that the trial court erred in dismissing the application on the ground that the appointment of commissioner would amount to collection of evidence. Here the purpose of advocate commissioner is to measure the land and survey it as per the sale deeds of the plaintiff and fix the boundaries, which would not amount to collection of evidence, it would only assist the court in arriving at just conclusion in appreciating the contentions and rival contentions of both parties.

For these reasons, I am of the view that the impugned order dated 21-4-2015 is liable to be set aside and an advocate commissioner has to be appointed for the purpose of survey and demarcation. Therefore, trial court is directed to appoint an advocate commissioner to survey the land with the help of surveyor deputed from the office of Assistant Director of Survey and Land Records, Sangareddy, Medak District and both parties are at liberty to file their work memos before advocate commissioner.

Accordingly, this Civil Revision Petition is allowed. No costs.

As a sequel to the disposal of this revision, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

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JUSTICE S.RAVI KUMAR

Dated 1-10-2015.

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

CIVIL REVISION PETITION No.2187 OF 2015

Dated 1-10-2015

Dvs