

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.2270 of 2015

ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondent.

2. The petitioner herein is defendant in O.S.No.90 of 2010 on the file of the Court of the Junior Civil Judge, Pulivendula (for short, trial Court). The respondent herein filed the said suit for declaration and permanent injunction. Earlier, when the trial Court objected the respondent for marking a photocopy of the unregistered sale deed dated 12.10.1941, he approached this Court by filing C.R.P.No.309 of 2014 and this Court dismissed the same, by order dated 04.04.2014. After dismissal of the said CRP, the respondent filed I.A.No.348 of 2014 in O.S.No.90 of 2010 seeking appointment of Mandal Surveyor, Lingala to survey the land in survey No.257/3 and to submit a report. Even though a counter was filed by the defendant (petitioner herein), when the said application was allowed by order of the trial Court dated 23.04.2015, the present Civil Revision Petition is filed.

3. The petitioner filed I.A.No.348 of 2014 seeking appointment of Mandal Surveyor stating that an extent of Ac.0-53 cents of land in survey No.257/3 was earlier acquired by the Government for construction of health centre and milk booth and a building was also constructed. The petitioner also stated that since the respondent is claiming the said land as his own, though it was acquired, he sought appointment of Mandal Surveyor for surveying the land of the respondent. The respondent filed a counter affidavit stating that there is no case for the petitioner and he did not file any document to show his *prima facie* title. The counter further states that the application filed by the petitioner was premature and it can be renewed if the Court comes to the conclusion that it was necessary to appoint a Mandal Surveyor. The counter also states that

there was no dispute with regard to survey No.257/3 and that the suit was filed in respect of the property in some other survey number.

4. The trial Court passed the impugned order allowing the application as follows:

“ Considering the totality of the facts, circumstances and nature of the relief, I feel that appointment of Mandal Surveyor to survey the land in Sy.No.257/3 and to submit a report to the what extent government acquired the land for construction of M.D.O Office, Milk booth and Health center, etc., is proper and necessary.

Point No.2:

In the result, Mandal Surveyor, Lingala Mandal is appointed as a commissioner to visit the suit schedule land, measure the land in Sy.No.257/3 and submit the report to what extent of land in that Sy.No.257/3 government acquired land for construction of M.D.O. Office, Milk Booth, Health centre, etc., on payment of process as per the prevailing rules. For report, call on 19-06-2015.”

5. In the face of the objections raised by the respondent, the trial Court should have recorded the reasons for justifying the appointment of a Mandal Surveyor as the suit schedule land does not relate to survey No.257/3 particularly when the petitioner has not filed any document justifying the appointment of Mandal Surveyor.

6. In the circumstances, the impugned order of the trial Court in I.A.No.348 of 2014 in O.S.No.90 of 2010 dated 23.04.2015 is set aside and the matter is remanded to the trial Court for passing appropriate orders in accordance with law. Accordingly, the Civil Revision Petition is allowed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 24.11.2015

TJMR