

HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4421 of 2015

ORDER:

This civil revision petition by the petitioners/defendants 4 and 6 is directed against the orders on the Proceedings Sheet, that is, docket orders dated 06.08.2015 of the learned Senior Civil Judge, Nuzvidu of Krishna District.

I have heard the submissions of the learned counsel for the revision petitioners/defendants 4 and 6 and that of the learned counsel for the 1st respondent/plaintiff.

I have perused the material record.

The facts necessary to be stated as a prelude to this order, in brief, are as follows :

In the suit for perpetual injunction brought by the 1st respondent/plaintiff, the defendants 1 and 5 filed a common written statement and the defendants 3 and 4 filed separate written statements resisting the suit. During the pendency of the suit, defendants 4 and 6 filed I.A.No.550 of 2013 seeking appointment of an Advocate-Commissioner to note down the physical features of the plaint schedule property and of the property of the 4th defendant. At the hearing before the trial Court, the learned counsel for the plaintiff reported no objection for granting the relief to defendants 4 and 6, but further requested the trial Court to direct the Commissioner to measure the properties; and in reply, the learned counsel for defendants 4 and 6 reported no objection for the said course.

Accordingly, the trial Court appointed an Advocate-Commissioner to note down the physical features of the plaint schedule property as well as the properties of the 4th defendant/2nd petitioner therein and directed that the properties be measured with the help of a Surveyor as per Mandal records of Musunuru Mandal and the boundaries be demarcated to avoid ambiguity and further directed that the expenses of the Commission be shared equally by the defendants 4 & 6 and the plaintiff. Later, on 06.08.2015, the impugned order was passed directing the Commissioner to execute the warrant and note down the physical features of the plaint schedule property, which is within R.S.No.13 only and measure the same and report to the Court. Therefore, defendants 4 and 6 are aggrieved.

The learned counsel for petitioners/defendants 4 & 6 would submit that the said defendants have no grievance with regard to the original order dated 19.11.2014 but, the Court below was in error in modifying its order and directing the property of the plaintiff i.e., the plaint schedule property alone to be measured though in the original order there was a direction to measure the property of 4th defendant as well after noting down its physical features. The learned counsel read portions of pleadings from the written statement of 4th defendant and stated that in the said written statement it is specifically pleaded that the 4th defendant was settled an extent of Ac.2-00 cents of dry land in R.S.No.13 of Chakkapalli village vide registered settlement deed bearing document No.767/1988 by her mother and that its Western side boundary is a way.

The learned counsel for the plaintiff/1st respondent supported the orders of the Court below stating that in a suit for perpetual injunction, when

the specific contention of the contesting defendants is that the properties are separated by a 'Puntha', the measurement of plaint schedule property alone is necessary and that if that work is done and if it is found that the properties are not overlapping, it would obviate the necessity to measure the properties of the 2nd petitioner i.e., the 4th defendant.

I have noted the submissions of both sides and given earnest consideration.

It is pertinent to note that the 6th defendant has not filed written statement and that defendants 1 and 5 filed a common written statement whereas defendants 3 and 4 filed separate written statements and on consent, the order dated 19.11.2014 in I.A.No.550 of 2013 was passed appointing the Commissioner to identify and measure the plaint schedule property as well as the property of the 2nd petitioner therein i.e., the 4th defendant. At the hearing, at one stage it is fairly submitted that the plaint schedule property and the property of the 4th defendant are separated by a 'Puntha'. The written statement contents, which are referred to supra, also would reflect that there is a way on the Western side of Ac.2-00 cents of property being claimed in the written statement of 4th defendant. Therefore, in the well considered view of this Court, if the Commissioner is directed to note down the physical features of the plaint schedule property which is within R.S.No.13 and measure the same with the assistance of a Surveyor as stated in the modified orders of the trial Court which are impugned in this revision, that would clinch the issue, provided such work of the Commissioner indicates that there is no overlapping of properties of both the parties and that the property being claimed by the plaintiff in the suit is in no way

concerned with the property being claimed by the 4th defendant, which is admittedly separated by a way in between the properties. On the above analysis, this Court is of the considered view that this revision petition can be disposed of with appropriate directions.

Accordingly, the revision petition is disposed of directing the Advocate-Commissioner appointed by the trial Court to execute the warrant and note down the physical features of the plaint schedule property which is within R.S.No.13 only and measure the same and file a report. However, it is made clear that if, on identification of the plaint schedule property and its measurement it is noticed that there is no overlapping of the properties and that the plaint schedule property and the property of the 4th defendant are separated by a way, the Commissioner shall not proceed with measurement of the properties of 4th defendant, as, such work would be redundant. However, if it is found that there is overlapping of plaint schedule property and the property of the 4th defendant, then the Commissioner may proceed to measure the property of 4th defendant as well after identifying it with reference to its boundaries.

Revision petition is accordingly disposed of. No costs.

Pending miscellaneous applications, if any, shall stand closed.

M.SEETHARAMA MURTI, J

31st October 2016

ajr