

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.5036 of 2016

ORDER :

Heard the counsel for petitioner, and Sri D. Narasimha Rao, counsel for respondents.

2. This Revision is filed challenging the order dt.08.08.2016 in I.A.No.204 of 2016 in O.S.No.82 of 2012 of the I Additional Junior Civil Judge, Kovvur.

3. The petitioner herein is plaintiff in the above suit.

4. The suit was filed by petitioner seeking perpetual injunction against respondents to restrain the respondents from interfering with his possession and enjoyment of the plaint schedule property.

5. It is the contention of petitioner that a survey was conducted prior to the filing of suit twice by the Mandal Surveyor, Kovvur, by name Rajasekhar on 24.05.2012 and 30.06.2012 fixing the northern boundary to the plaint schedule property. He contended that the said surveyor had issued notice before making survey and it is necessary to mark the said survey report in the suit; that he had earlier filed an application to summon the Mandal Surveyor, Kovvur, but the said surveyor did not bring any record and stated that Sri Rajasekhar who had worked as a surveyor in 2012 in Kovvur Mandal had been transferred to a place in Chagallu and was working there; and that it is

necessary to summon the said Rajasekhar, who is now working as Mandal Surveyor, Chagallu, and who had conducted the survey with regard to the plaint schedule property prior to the filing the suit, to give evidence since he is a crucial witness.

6. Counter-affidavit was filed by respondents opposing this application. It was denied that the said Rajasekhar had conducted any survey prior to the filing of suit. They contended that the present application to summon the Mandal Surveyor, Chagallu was not maintainable, and that if any surveyor had conducted any survey while working in a particular place, he would hand-over all records on his transfer to another place to the person who was posted in his place. They contended that since no records were produced by the Mandal Surveyor, Kovvur, there is no record of the survey conducted by any such surveyor in respect of the lands of petitioner.

7. By order dt.08.08.2016, I.A.No.204 of 2016 was dismissed by the Court below. It held that the entire material pertains to Pasivedala Village which is in the custody of Kovvur Mandal and not in the custody of Chagallu Mandal; that the Mandal Surveyor filed a memo that no records were available in his Office; and the person who is working at Chagallu, not being the proper custodian of the said record, cannot bring the record which is supposed to be in the custody of Mandal Surveyor, Kovvur.

8. The counsel for petitioner contended that the said order is perverse, inasmuch as the person who conducted the survey when he was working as Mandal Surveyor in Kovvur prior to the filing of the suit is now transferred to Chagallu and is working there, and since he is a crucial witness, it is necessary to examine him and to mark his survey report in the suit; and the Court below ought not to have deprived him of the opportunity of doing so. He pointed out that since the Mandal Surveyor, Kovvur had stated that no records were available in his office with regard to the survey conducted in the year 2012 by Sri Rajasekhar (the then Mandal Surveyor, Kovvur) it is all the more necessary to summon the said Rajasekhar who is now working as Mandal Surveyor, Chagalla to state about the survey he has conducted and the report which he has given.

9. The counsel for respondents supported the order passed by the Court below.

10. The admitted facts are that one Rajasekhar who was the Mandal Surveyor, Kovvur in 2012 conducted the survey in respect of the property of petitioner. His report and other supporting record were not available in the office of the Mandal Surveyor, Kovvur. So the petitioner wanted to summon the said Rajasekhar who is now posted on transfer at Chagallu as Mandal Surveyor. Merely because the Mandal Surveyor, Kovvur stated that records of the survey conducted by the said Rajasekhar (when he was working in Kovvur) were not available, the Court cannot presume that the evidence of Rajasekhar

who had conducted the survey in 2012, is not relevant. The reasoning given by the Trial Court is perverse and it seems to have missed the point that the absence of record of survey of 2012 in the Office of the Mandal Surveyor, Kovvur makes it all the more necessary to examine the surveyor who did the said survey, i.e., Rajasekhar, who is posted as Mandal Surveyor, Chagallu.

11. Therefore, the impugned order passed by the I Additional Junior Civil Judge, Kovvur, West Godavari District is set aside; I.A.No.204 of 2016 is allowed. Accordingly, the Civil Revision Petition is allowed. No order as to costs.

12. As a sequel, miscellaneous petitions, pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11-11-2016

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