

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.5402 OF 2015

ORDER:

The Civil Revision Petition is filed impugning the order dated 29.10.2015 passed in I.A. No.1211 of 2015 in O.S. No.1250 of 2012 on the file of II Additional Junior Civil Judge, Warangal.

2) Heard both sides and perused the material on record.

3) The revision petitioner is the defendant in O.S. No.1250 of 2012 and respondent herein is the sole plaintiff and the said suit is filed for bare injunction. Pending the suit, I.A. No.1211 of 2015 was filed by the plaintiff under Order XXVI Rule 9 CPC to appoint an advocate commissioner to localize whether the suit property i.e., Ac.0.22 gts is in S.No.1047 or in S.No.1048 at Madikonda Village, Hanamkonda. From the contention of defendant, it is a part of property in S.No.1048, which the plaintiff claims falsely.

4) The record shows earlier the plaintiff's father, by name G.Rajaiah, maintained O.S. No.279 of 1994 for the relief of declaration of title as owner by claiming the property as ancestral property and for consequential prohibiting permanent injunction. The defendant's father also filed a suit i.e., O.S No.531 of 1993 for bare injunction. Both suits were disposed of by common decree and judgment by the learned Principal Junior Civil Judge, Warangal.

5) During pendency of O.S. No.531 of 1993, advocate commissioner was appointed by order in I.A. No.1251 of 1996 for demarcation of the boundary line between S.No.1047 of plaintiff and S.No.1048 of defendant in O.S. No.1250 of 2012. The Commissioner filed his report after measurements and demarcation through Deputy Director.

6) The application in I.A. No.1211 of 2015 in O.S. No.1250 of 2012 is filed to localize the property of S.No.1047 and 1048 by fixing the boundary. The defendant opposed the application saying that I.A. No.1251 of 1996 in O.S. No.531 of 1993, commissioner was already appointed and demarcated the boundary line in S.Nos.1047 and 1048 and submitted his report and the lis covered by both suits in earlier round of litigation, was ended on 31.03.2000 by reversing the decrees and judgments in both the suits by common judgment in A.S. Nos.91 and 92 of 1998, whereby O.S. No.531 of 1993 was decreed and O.S. No.279 of 1994 was dismissed, as such, once the boundary was demarcated by earlier advocate commissioner and the lis was adjudicated finally, the present application for appointment of advocate commissioner is unsustainable.

7) The trial Court, however, held repealing the said contention of the respondent in I.A. No.1211 of 2015, earlier the property was not localized and presently it requires localization to avoid much oral evidence. It is impugning the said order dated 29.10.2015, the defendant in O.S. No.1250 of 2012 maintained the present revision.

8) Heard learned counsel for the revision petitioner. Though respondent was served, failed to attend, hence taken as heard. Perused the material on record.

9) Once there was a demarcation of the boundary line between S.Nos.1047 and 1048 of Madikonda Village and even the report is available including certified copy thereof and the same can be placed reliance by any of the party to the lis. However, that is not be all and end all and once the plaintiff now says from the present existing features, it requires localization and demarcation, but for to say the present demarcation is only with reference to the earlier report between the parties to the lis in claiming through their father by earlier

round of litigation and not otherwise. Thus, the trial Court, while appointing advocate Commissioner for localization and demarcation should have made it clear that such demarcation is only with reference to the earlier commissioner's report in I.A. No.1251 of 1996 in O.S. No.531 of 1993 and with reference to the revenue record.

10) Accordingly and in the result, the revision is disposed of and the impugned order of the lower Court is modified by directing the Commissioner to answer the work memos of both suits including taking into consideration the plan and report in I.A. No.1251 of 1996 of the earlier round of litigation as part of the task of localization and demarcation to be done by the advocate Commissioner with the assistance of surveyor.

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

Dr. B. SIVA SANKARA RAO, J

Dt.01.08.2016
Knl