THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.5680 of 2015

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the unsuccessful defendants 4 to 6 is directed against the orders dated 04.12.2015 of the learned VIII Additional District Judge (Judge, Fast Track Court) Ranga Reddy District at LB Nagar while holding Full Additional Charge of the Post of the learned IX Additional District Judge passed in IA.no.215 of 2015 in OS.no.539 of 2012 filed by the sole plaintiff under Order XXVI Rules 9 and 10 read with Section 151 of the Code of Civil Procedure, 1908 ('the Code', for brevity) requesting to appoint an advocate Commissioner to make a local inspection and localise the property by conducting survey with the help and aid of either Mandal Surveyor or the Assistant Director, Survey and Settlements and submit a report as to whether the suit schedule property is situated in the property purchased by the plaintiff which is admeasuring Ac.1.07 guntas in Sy.no.59 out of total extent of Ac.2.13 guntas at Guttala Begumpeta village.

2. I have heard the submissions of the learned senior counsel for the revision petitioners/defendants 4 to 6 ('the defendants 4 to 6', for brevity) and the learned counsel for the 1st respondent/plaintiff ('the plaintiff', for brevity). Respondents 2 to 9 are stated to be not necessary parties. I have perused the material record.

3. The introductory facts, in brief, are as follows:

The plaintiff having originally brought a suit for declaration of title and perpetual injunction had later converted the suit into one for declaration of title and recovery of possession *inter alia* contending that during the pendency of the suit, the defendants had trespassed into the property and started making constructions. The defendants 4 to 6 along with the other defendants are resisting the suit. When the trial is in progress and after the

PWs1 and 2 were examined on the side of the plaintiff, the instant application is filed by the plaintiff for appointment of a Commissioner for the aforementioned purpose. That application was also resisted by the defendants 4 to 6 by filing a counter. On merits, the trial Court had allowed the application and appointed a Commissioner for the purpose mentioned in the application of the plaintiff. Therefore, the aggrieved defendants 4 to 6 are before this Court.

4. The case of the plaintiff in support of the request for appointment of a Commissioner, in brief, is this:

The plaintiff is the owner of the plaint schedule property, which is part of land admeasuring Ac.1.07 guntas in Sy.no.59, which was purchased under a registered sale deed dated 28.09.1995. The defendants 1 to 6 claimed that they have purchased the property from the defendants 8 and 9. The total extent of land in Sy.no.59 of Guttala Begumpeta village is Ac.2.13 guntas. The plaintiff had purchased Ac.1.07 guntas out of the said extent. The defendants 8 and 9 had purchased an extent of Ac.1.06 guntas in the said survey number. The documents viz., the registered sale deed under exhibit A8, and exhibits A11 to A14 and A17 and other documents exhibited by the plaintiff would disclose that the main controversy between the parties is as to whether or not the plaint schedule property admeasuring 1500 Sq.yards is situate in the portion of the land purchased by the plaintiff, which is admeasuring Ac.1.07 guntas out of the total extent of Ac.2.13 guntas in Sy.no.59. Hence, for deciding the said issue, the appointment of a Commissioner for the desired purpose would be of assistance. Hence, the petition is filed.

5. The case of the defendants 4 to 6 as stated in the affidavit of the 6th defendant may be stated, in brief, as follows: "The material allegations in the plaint and the affidavit filed in support of the petition are false. The alleged purchase said to have been made by the plaintiff is not correct. The plaintiff is neither the owner of the property nor was he in possession of the property at any time. In the cross examination, plaintiff had made the following admissions: '*The plaintiff got measured the land through private surveyor and*

got fixed the boundaries. We have not raised any fencing to the land purchased under original of Ex.A8 Sale Deed after purchase. We have not sold any extent of land out of the said acres 01.07 guntas and the same is as it is on today. It is true that our property is different from the property of defendants 1 to 6." [Reproduced verbatim]. It is evident from the averments in the plaint and plaint schedule and also the sale deed of the plaintiff that the property purchased by the plaintiff is within distinct boundaries and that the plaintiff was in possession of the said lands that he owned. The plaintiff alleges that the defendants had encroached 1500 Sq. yards in the said extent of Ac.01.07 guntas. Therefore, the initial onus of proof is on the plaintiff to adduce evidence and prove the identity of the property. He has to establish the identity of the property and also that he owns an area of Ac.1.07 guntas and that in that property the plaint schedule property is a part. In view of the admissions of PW1 in his cross examination, there is no controversy left to be determined by appointing a Commissioner. The application for appointment of a Commissioner is intended to cover up the laches and also the admissions in the cross-examination of PW1 and is intended to gather evidence. Therefore, the petition is liable for dismissal."

6. I have given earnest consideration to the facts and the submissions. It is pertinent to note that the learned counsel appearing for both the sides having advanced arguments in line with the contentions, which are stated supra, had placed reliance on the following decisions. The learned senior counsel for the defendants 4 to 6 placed reliance on the decisions in **Subhaga and others v. Shobha and others**[1]**;** and **Arvind Kumar Agarwal v. Legend Estates (P) Ltd.**,[2]. The learned counsel for the plaintiff placed reliance on the decisions in **Jyotsnarani Mishra alias Mohapatra v. Purna Chandra Misra**[3]**; Sou.Ashatai Vijayrao Warekar and Ors v. Champatrao Laxmanrao Kale and others**[4]**; D. Vidya Sagar Rao and another v. K. Indira Devi and others**[5]**; Badana Mutyalu and another v. Palli Appalaraju**[6]**;** and **Malhar Ganpat Bokephod v. Shivaji Vishwanath**

Pawal[7]**.**

7. I have gone through the precedents. It is fairly conceded that in a suit for declaration of title and recovery of possession, the question as to whether a Commissioner could be appointed or not for localisation is a pure question, which depends upon the facts of a particular case and that there cannot be a straight jacket formula or an established general proposition in regard to the said issue. Reverting to the facts of the case, it is relevant to note that the specific case of the plaintiff is that he had purchased under a registered sale deed Ac.1.07 guntas in Sy.no.59, in which the plaint schedule property is a part; and that the defendants had encroached upon 1500 Sq. yards out of the said total extent of Ac.1.07 guntas, which is again a part of Ac.2.13 guntas, which is the total extent of land in the said survey number. It is now pertinent to refer to the boundaries of the plaint schedule. **NORTH: Sy.no.59 part; SOUTH: Doctors Colony; EAST: Road in Sy.no.59 part; WEST: nala**. A perusal of the boundaries would show that the Northern boundary is part of Sy.no.59 and the Eastern boundary is a road and the Western boundary is 'nala' and the Southern boundary is Doctors' colony. Therefore, from a reading of the boundaries, it is clear that the properties on all four sides of the plaint schedule property being huge extents of properties, the boundaries are not distinct and differentiating or segregating boundaries. Moreover the Northern boundary is – part of the land in Sy.no.59. Be that as it may. The case of the defendants 4 to 6 as could be seen from the written statement is that an extent of Ac.1.06 guntas was purchased originally by the defendants 8 and 9; and that the defendants 8 and 9 in their turn had purchased the said property from Erani Achaiah; and that later the defendants 8 and 9 had sold an area admeasuring 1465.76 Sq. yards through three unregistered sale deeds all dated 15.12.1995 in favour of the defendants 1 to 3; and that the said defendants 1 to 3 had gifted the said property by way of registered gift deeds in favour of the defendants 4 to 6. Thus, a perusal of the pleadings in the suit would indicate broadly that there is a dispute about the identity of the property, which the plaintiff is claiming as was occupied by the defendants and seeking recovery of possession. The defendants are *inter alia* denying

not only the title but also the possession of the plaintiff. Further, the plaintiff is contending that the plaintiff's extent of Ac.1.07 guntas is on the Western side and that the remaining extent of Ac.1.06 guntas is towards the East of the plaintiff's property. Both the extents being claimed by the parties are part and parcel of Sy.no.59, the total extent of which is indisputably Ac.2.13 guntas. Under law, in any suit in which the Court deems local investigation is requisite or proper for the purpose of elucidating any matter in dispute, the Court may issue a commission to an advocate or any competent person and direct to make such investigation and to report to the Court. Therefore, in the well considered view of this Court, the controversy can be resolved by appointing a Commissioner for localisation and demarcation of the properties.

8. Before parting with the case, it is necessary to deal with the following contentions that were advanced by the learned senior counsel for the defendants 4 to 6. The first contention is that the order of the Court below is not a speaking order and that the Court below, having only just referred to the facts cursorily and the three cited decisions, had jumped to the conclusion that a Commissioner can be appointed. Having gone through the order of the Court below and for the reasons aforementioned, this Court is satisfied that the conclusion of the Court below is correct though there is no adequate reasoning in support of its correct conclusion. In the well considered view of this Court, when the conclusion is right, the order of the Court below need not be set aside for mere inadequacy of reasons; nevertheless, such order can be sustained by this Court by supplementing the reasons. The second contention is based on certain portions of evidence in the deposition of PW1. In the well considered view of this Court, the present stage of the matter is not the apposite stage to appreciate the evidence and record findings as to whether the said admissions, which are being relied upon, dislodge the case of the plaintiff and advance the case of the defendants 4 to 6. Nonetheless, from the portions in the deposition, which were pointed out, it is relevant to note that PW1 had admitted that he had got the properties surveyed by a private surveyor and obtained a report. In the well considered view of this

Court the said admission is not sufficient to decline the request for appointment of a Commissioner for the desired purpose as the said report that was admittedly obtained by the plaintiff, even if filed into Court, will not have much of a probative value as it was admittedly obtained privately by the plaintiff and as such a report privately obtained, in the absence of the defendants at the time of the survey, may not serve the intended purpose; and it is also not in the interests of justice to force upon the defendants such a report.

9. Viewed thus, this Court finds that the revision petition is *devoid* of merit and that the order impugned does not call for any interference.

10. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this CRP shall stand closed.

M. SEETHARAMA MURTI, J

09.03.2016
Vjl

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[1] (2006) 5 SCC 466
[2] 2015(2) ALD 206
[3] AIR 2007 (NOC) 2058
[4] 2011 (6) AIR Bom R 351 (Nagpur Bench)
[5] 2004(2) ALD 426
[6] 2013(5) ALD 376
[7] AIR 2014 (NOC) 173 (BOM)