

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.4198 of 2013

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ORDER:

This Civil Revision Petition, under Section 115 of Code of Civil Procedure, 1908 ('the Code', for brevity) filed by a third party-claim petitioner is directed against the order dated 09.07.2013 of the learned IV Additional District Judge (Judge, Fast Track Court) of Warangal passed in E.A.No.6 of 2013 in E.A.No.3 of 2011 in E.P.No.130 of 2006 filed under Order XVI Rules 6 and 7 read with 151 of the Code requesting the Court to issue summons to one B.Chandra Shekar, s/o lylaiah, Mandal Surveyor to appear before the Court and give evidence on the side of the revision petitioner/claim petitioner.

2. I have heard the submissions of the learned counsel for the revision petitioner/claim petitioner ('the claim petitioner' for brevity) and the learned counsel for the 1st respondent/decreed holder ('the DHR' for brevity). I have perused the material record.

3. The short point involved is as to whether the claim petitioner has made out valid and sufficient grounds to issue summons to the Mandal Surveyor as desired by her.

4. The introductory and other facts and the case of the claim petitioner necessary for consideration, in brief, are as under: "The plaintiff/DHR having brought the suit for specific performance had obtained an *ex-parte* decree and had filed the Execution Petition for realizing the fruits of the said decree. During the pendency of the EP, the claim petitioner had filed the claim petition claiming *inter alia* that she is the owner of the property covered by the decree schedule and

that in the said suit/decreed schedule property, the property of the claim petitioner is also included and that, therefore, it is necessary to examine the Mandal Surveyor, who had surveyed the property, as a witness on her side. It is further stated by the claim petitioner that the entire claim petition schedule property was surveyed by the Surveyor (the proposed witness) and that he had issued the map along with a certificate after conducting survey and that the same is filed along with the Claim Petition and that he is having knowledge in regard to the property and that as such, his examination as a witness on her side is necessary for a just decision in the matter.

5. The case of the DHr, in brief, is as follows:-

The claim petitioner having filed the claim petition and her chief affidavit in the year 2010 is not appearing before the court to face cross-examination. She had earlier filed two petitions viz., (i) E.A.No.10 of 2010 to permit her husband and GPA holder to represent her; and (ii) E.A.No.11 of 2010 to appoint an Advocate Commissioner. Both the said petitions were dismissed by the court below. In the common order passed by this Court in the revision petitions in C.R.P.Nos.393 and 488 of 2011, this court had permitted the claim petitioner to appear through her power of attorney holder but, had dismissed the application seeking appointment of a Commissioner by confirming the orders of the court below in that regard. The claim petitioner is dragging on the matter since several years. The claim petitioner is intending to prolong the matter forever. Hence, the petition is liable for dismissal.

6. On merits, the trial court had dismissed the petition. Aggrieved thereby, the claim petitioner had filed the present revision before this Court.

7. The learned counsel for the claim petitioner while reiterating the case of the claim petitioner would submit that it is necessary to examine the surveyor as a witness, in the facts and circumstances of the case and for the reasons stated by the claim petitioner; and that the claim petitioner had purchased her property on 28.06.2004 under a regular registered sale deed i.e., prior to the suit; and that the property as described in the decree schedule does not exist on land; and that the boundaries of the suit site as mentioned in the decree schedule also are not existing on the land; and that the boundaries as mentioned in the decree schedule are not tallying with the plaint schedule property; and that, therefore, the court of execution ought not to have declined to grant the request of the petitioner to examine the surveyor as a witness on her side, as he is a crucial and material witness having knowledge of the vital facts as he had earlier surveyed the property involved in the *lis*. Per contra, the learned counsel for the decree holder while supporting the order of the court below had urged that the petition is filed in a casual manner; and that it is purely intended to drag on the matter; and that the affidavit of the claim petitioner filed in support of the petition is bereft of the necessary details like under what circumstances and when and for what purpose and at whose instance, the alleged survey has been conducted; and that the copy of surveyor report with the map, if any, is not filed along with the petition; and that the trial court in its order had observed that the claim petitioner having not filed the material documents before it could not explain as to how the summoning of the surveyor as a witness would be helpful to the claim petitioner; and that the order, which is impugned in the revision, is a reasoned order; and that the same does not warrant any interference by this Court.

8. I have bestowed my attention to the facts and the submissions of both the sides. As per the settled legal position, the claim petition is to

be tried and disposed of on merits in the same manner as a suit for declaration of title would be tried and disposed of and, therefore, in order to succeed in the claim petition, the claim petitioner has to establish her right, title and interest over the property being claimed by her. As already noted, the application filed for appointment of Commissioner was already dismissed by the court below and the said order was confirmed by this Court in a revision. Now, the claim petitioner, who intends to examine a surveyor, did not file with her application, a copy of the surveyor's report with map, if any. Though it is stated in the affidavit filed in support of the instant petition that such a report of the surveyor along with the map is filed along with the claim petition, the copy of the claim petition, which contains the list and the details of the documents filed along with the claim petition, is not filed along with material papers. Even the copy of the surveyor's report with the map, if any, is not filed along with the material papers enclosed to this revision. No reasons are forth coming for not filing such crucial documents. The order of the court below, on a perusal, would show that no such material documents are filed before it. Be that as it may, the affidavit of the petitioner is bereft of the vital details as regards the date of the said survey said to have been conducted by the surveyor, the purpose for which such survey was conducted and at whose instance the said survey was conducted. It is not the case of the claim petitioner that the survey was conducted with notice to the parties to the *lis* and in their presence and after considering the title documents of the parties to the *lis*. Therefore, the probative value, if any, of the said survey report could not *prima facie* be explained at this stage by the claim petitioner. As rightly canvassed by the 1st respondent, the instant petition for summoning the witness and the present revision are filed in a casual manner. Therefore, the claim petitioner, who is indolent, is not entitled to the relief claimed, in the well considered

view of this Court. Hence, this Court finds that there is no merit in the revision and that the order of the court below, which is well reasoned, does not warrant interference.

9. In the result, the Civil Revision Petition is dismissed. It is needless to mention that dismissal of the revision shall not preclude the revision petitioner/claim petitioner from adducing during the course of enquiry before the court of execution, the necessary and appropriate evidence, both oral and documentary, which the law permits.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this civil revision petition, shall stand dismissed.

M. Seetharama Murthi, J

18th April, 2016
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