

HON'BLE SRI JUSTICE R. KANTHA RAO

Civil Revision Petition No.1121 of 2016

ORDER:

Heard Sri A.K. Kishore Reddy, learned counsel appearing for the revision petitioner-1st defendant and Sri N. Siva Reddy, learned counsel appearing for respondents 1 to 4-plaintiffs.

2. Respondents 1 to 4/plaintiffs instituted a suit for declaration of their title and recovery of possession on the encroached property, which was shown as 'A' schedule property and as 'B.C.E.F' in the plaint plan. The contention of the learned counsel for the revision petitioner-1st defendant is that in the process of road widening, certain extent of land of the plaintiffs was lost and it is incumbent on his part to establish the said contention in the suit. Earlier, the revision petitioner-1st defendant filed IA No.925 of 2015 before the court below for summoning the Assistant Engineer, Roads & Buildings Department, Pithapuram, with a direction to produce the entire record relating to road widening. The court below allowed the said petition on 21.07.2015. Thereafter, the Assistant Engineer, Roads & Buildings, Pithapuram filed a memo in to the lower court on 07.09.2015 stating that the record of the widening work of Samalkot – Uppada road during the year 1997-99 was not traced out in his office, as it was very old record and the work was completed long back. After filing of the memo by the Assistant Engineer, Roads & Buildings, the petitioner herein filed the present IA No.1502 of 2015 on 21.09.2015 to summon the Municipal Commissioner, Samalkota and the Revenue Divisional Officer, Kakinada. The purpose of filing of the present petition by the petitioner appears to be that the record relating to the road widening work would be available with the Municipal Commissioner or Revenue Department. The said petition was dismissed on the ground that no specific plea was taken by the petitioner in the written statement that the plaintiffs lost some site in the process of road

widening and also on the ground that the Assistant Engineer, who filed memo in the lower court on 07.09.2015, did not state that the record would be available with the Municipal Commissioner, Samalkot or with the Revenue Divisional Officer, Kakinada. The trial court was of the view that the petition was filed to protract the litigation.

3. In any event, one of the crucial questions to be determined by the trial court appears to be whether the defendants had encroached any portion of the land belonging to the plaintiffs or not. For the same purpose, an application was filed earlier and the same was allowed. It would show that the trial court wants to ascertain as to the fact whether certain piece of land belonging to the plaintiffs was lost in the road widening process. Therefore, in the opinion of this court, the petition cannot be said to be designed for the purpose of protracting the litigation. Merely because, no specific plea was taken in the written statement as to the *factum* of the plaintiffs losing certain piece of land in road widening process, it cannot be said that no such application can be filed by the revision petitioner. The reason being the contest between the parties is whether any portion of such land of the respondents 1 to 4/plaintiffs has been encroached upon by the defendants. Therefore, the trial court ought to have allowed the application filed by the revision petitioner.

4. For the foregoing reasons, the civil revision petition is allowed by setting aside the order dated 21.01.2016 passed by the lower court in IA No.1502 of 2015 in OS No.503 of 2012. No order as to costs. Miscellaneous petitions, pending if any in this petition, shall stand closed.

R. KANTHA RAO, J

Date: 04.03.2016

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