

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.5930 of 2016

ORDER:

This Revision is filed challenging the order dt.18-10-2016 in I.A.No.389 of 2016 in O.S.No.691 of 2006 of the Principal Junior Civil Judge, Bhimavaram.

2. The petitioners are defendants in the suit. The respondents/plaintiffs filed the suit for a perpetual injunction restraining the petitioners from ever interfering with the plaint schedule lane of plaintiffs either by way of annexing the same into their site or in any other manner.

3. The evidence on plaintiffs' side was completed on 02-11-2015 and the matter was coming for defendants' side evidence from 07-12-2015 and their evidence was closed on 05-07-2016 after they examined three witnesses. Between 07-12-2015 to 05-07-2016, several applications were filed by petitioners/defendants, which were allowed and the matter was posted for arguments on 05-07-2016.

4. At that stage, a counter-claim was filed by petitioners. Later they filed I.A.No.324 of 2016 and I.A.No.325 of 2016 to recall P.W.1 for the purpose of further cross-examination on the ground that the earlier counsel failed to cross-examine P.W.1 elaborately. These applications were dismissed.

5. Thereafter I.A.Nos.386 of 2016 to 388 of 2016 were filed to reopen the evidence, to recall D.W.1 and also to receive documents. I.A.No.389 of 2016 was also filed seeking appointment of an Advocate-Commissioner to survey, demarcate and measure the sites in R.S.No.311/35 and 311/36 of Akivedu village as per linear measurements found in FMB sketch with the assistance of Mandal Surveyor, to note down all existing physical features, to draw a plan and to file a report.

6. It is pleaded in these applications that though the suit is posted for arguments on 01-09-2016, it was realized that the questions relating to boundaries and other particulars were not asked during cross-examination of P.W.1 and that the plaintiffs' case is that they own land in R.S.No.311/1, Akivedu village, but the said survey number was subsequently renumbered as R.S.No.311/36 and the petitioners/defendants have land in R.S.No.311/35. It is contended that with great difficulty, the petitioners were able to obtain copy of the FMB of the entire village in R.S.No.311 with its 47 sub-divisions on 20-08-2016 itself and this discloses the existence of their sites in both R.S.No.311/35 and R.S.No.311/36 with their specific linear measurements, and the said FMB should also be allowed to be marked while appointing Advocate-Commissioner for the above purpose.

7. Counter-affidavit was filed by respondents opposing this application. It is stated therein that petitioners had previously summoned the concerned Tahsildar for production of survey report,

but he stated by way of memo that no such record is available in his office and the petitioners, instead of getting ready for arguments, filed these applications. They contended that the scope of suit is very limited and there is no necessity to seek appointment of Advocate-Commissioner to measure the lands of others.

8. By order dt.18-10-2016, I.A.No.389 of 2016 was rejected. The Court below observed that the contentions of petitioners that there is no such land in existence physically as pleaded by respondents and that respondents' land is in R.S.No.311/35 was nowhere elicited or suggested while respondents were being cross-examined; while denying the existence of the disputed lane in their pleadings, the petitioners in their evidence did not whisper about property of respondents or variation of extent or the encroachments of any such extent by respondents; that the petitioners had kept quiet for 10 years till completion of their evidence and now, when the matter is posted for arguments, they cannot be allowed to reopen the suit and seek appointment of Advocate-Commissioner. It also observed that it indicates tactics of petitioners to file applications one after the other to procrastinate the proceedings.

9. Challenging the same, this Revision is filed.

10. Learned counsel for petitioners contended that the Court below ought not to have dismissed I.A.No.389 of 2016 seeking appointment of Advocate-Commissioner since petitioners obtained copy of FMB with delay and the refusal to appoint Advocate-

Commissioner would amount to denial of opportunity to petitioners to establish their case.

11. Learned counsel for petitioners, however, has not disputed the fact that the plea of the petitioners that respondents' property was not physically in existence or that their property is in R.S.No.311/35 was not even suggested to the witnesses examined on behalf of respondents/plaintiffs. Without putting their case to respondents in cross-examination, it is not open to petitioners to try to prove the said contention by getting the Advocate-Commissioner appointed. The suit is of the year 2006 and is posted for arguments. At this stage, the petitioners cannot be allowed to procrastinate the disposal of the suit by filing petitions of this nature.

12. Therefore, I do not find any error of jurisdiction in the order of the Court below warranting interference by this Court under Article 227 of the Constitution of India.

13. Accordingly, this Civil Revision Petition is dismissed at the stage of admission. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-12-2016

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