

THE HON' BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.3099 of 2016

ORDER:

This petition under Article 227 of Constitution of India is filed challenging the order, dated 18-04-2016, in I.A.No.29 of 2012 in O.S.No.296 of 2003 passed by the I Additional Senior Civil Judge, Kakinada passing a final decree allotting A1 to A5 plots to the plaintiffs 4 and 5 and defendants 4 to 6 are allotted B1 to B5 plots running from north to south in the plan prepared by Town Surveyor shown in the plan filed by the Commissioner along with his report.

The petitioner challenged the order on various grounds mainly on the ground that land available on ground i.e. decree schedule is 1500 square yards, but whereas the trial Court directed the commissioner to measure the land as per Exs A-1 and A-2 agreements of sale and compare the boundaries with the suit schedule property. Accordingly, the commissioner filed report without ascertaining the actual land available on ground. Therefore, the commissioner's report is not in consonance with the direction issued by the trial Court in the earlier order in I.A.No.29 of 2012 in O.S.No.296 of 2003, dated 29-10-2013.

During hearing, learned counsel for the petitioners would contend that the land actually available on ground if measured after removing the encroachments if any, both parties will get more land than the site divided into plots by the commissioner and allotted by the trial Court.

It is brought to the notice of this Court by counsel for the respondents that order dated 29-10-2013 in I.A.No.29 of 2012 in O.S.No.296 of 2003, where a direction was given to the Commissioner which is as follows:

“ Moreover no prejudice is caused to the respondents if the Commissioner identifies the plaint schedule property with reference to Exs A1 and A2 agreement of sales. There is every

likely hood of change of boundaries due to passage of time and any discrepancy in the boundaries can be brought to the notice of the Advocate commissioner basing on which the court can come to the conclusion whether the plaint schedule property is entirely different property or whether Exs A1 and A2 relate to plaint schedule property or not. The objections raised by the respondents are not tenable. Hence the Advocate commissioner is permitted to identify the plaint schedule property with reference to Exs A1 and A2. The Advocate Commissioner is further directed to verify the boundaries as mentioned in the plaint schedule and compare them with the boundaries given in Exs A1 and A2 and to note whether the boundaries are broadly tallying with each other and they are identifiable with the plaint schedule property. For filing report call on 18-11-2013.”

In view of direction, the Commissioner is not only required to measure the land as per Exs A1 and A-2 and verify the boundaries as mentioned in plaint schedule and but also to compare with the boundaries given in Exs A1 and A2 and note down the boundaries whether boundaries of the schedule property is tallying with each other and identifiable with the plaint schedule property. Here, the contention of the counsel for the respondents is that commissioner actually measured the site and compared the boundaries as per the 2nd and 3rd page of the report but the extent of the suit schedule is 1500 square yards which is not tallying. Even according to Exs A1 and A2 the extent is 1263.63 square yards, the land available on ground is 1213, which is less than the land covered by Exs A1 and A2.

If the land is located on ground based on the schedule annexed to the plaint, both parties will be benefited and they will get more site. The only grievance of counsel for the petitioners is that the Commissioner is bound to locate the entire extent of 1500 square yards on ground, divide the same into plots. Thereafter, the Court has to allot the property as per good and bad qualities.

The main grievance of the respondents is that the matter is delayed almost for 14 years and the parties are being put to serious loss and inconvenience. Therefore, to avoid such loss, I deem it appropriate to direct the trial Court to re-entrust the warrant to identify the schedule land i.e. 1500 square yards on ground, fix the boundaries and compare the boundaries mentioned in Exs A1 and A2 with the boundaries existing on ground and divide the same as per good and bad qualities. On filing such report after considering the objections, the trial Court is directed to decide the application within two months from the date of receipt of a copy of this order.

With the above direction, this revision petition is disposed of. As a sequel to the disposal of this revision petition, miscellaneous petitions, if any, pending shall stand closed.



JUSTICE M. SATYANARAYANA MURTHY

27-06-2017

Note:
Issue CC by 29-06-2017.
B/ o.
Nvl