

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No.2443 of 2017

ORDER:

Assailing the order dated 18.11.2016 passed in I.A.No.937 of 2015 in O.S.No.400 of 2014 by the Principal Junior Civil Judge, Chittoor, wherein the application filed by the petitioner requesting the Court to direct the advocate commissioner to revisit and survey the plaint schedule property, with the help of Mandal Surveyor was rejected, the present revision came to be filed by the petitioner/ defendant.

2. As seen from the record, the respondents filed O.S.No.400 of 2014, seeking to declare the plaintiff's right in the plaint schedule property and for grant of permanent injunction restraining the defendant, his men, agent followers from in any manner interfering with the plaintiff's peaceful possession and enjoyment in the plaint schedule property. A written statement came to be filed disputing the averments in the plaint. It was pleaded that the suit schedule property in Survey No.59/ 8A was never claimed by the plaintiff at the any point of time in their earlier proceedings and as such the suit itself is not maintainable. The plea of the defendant appears to be that the he purchased the property, which fact was never disputed by the plaintiffs. During the pendency of the suit, I.A.No.937 of 2015 came to be filed by the defendant, requesting the Court to direct the advocate commissioner to revisit the site and conduct survey with the help of Mandal Surveyor. It was also stated by the defendant in the said application that I.A.No.955 of 2014, filed by him raising his objections to the commissioner's report, may be read as a part and parcel to the report. It was further pleaded in the affidavit that the plaintiffs have

been misrepresenting the Court with regard to O.S.No.44 of 1995 and O.S.No.644 of 1995. It was stated that the suit schedule survey number has nothing to do with the claim of the plaintiffs and it has to be identified on ground for disposal of real controversies in the suit. A counter came to be filed by the plaintiffs opposing the same. It was stated that pursuant to the orders passed earlier, the Advocate Commissioner conducted survey over the plaint schedule property in the presence of the defendant and submitted his report; that the defendant never purchased any property in Survey No.59/ 8A and the sale deed is created in order to knock the eastern side of the plaint schedule way.

3. After considering the material on record, the trial Court rejected the request of the defendant, but however, gave liberty to the petitioner/defendant to file fresh application for revisit of the advocate commissioner or appointment of new advocate commissioner, during the trial in the main suit, if there is any ambiguity with regard to physical features of the suit schedule property. Challenging the same, the present revision came to be filed.

4. Reiterating the stand taken by the petitioner in I.A., the learned counsel for the petitioner would submit that it would be just and proper if the advocate commissioner re-visits the site and conducts a survey with the help of Mandal Surveyor. He submits that no prejudice would be caused to either of the parties, if re-survey is conducted, when trial in the said suit has not yet commenced. He also relied upon the judgment of this Court reported in *Mala Narasimulu Vs. Land Acquisition Officer – cum – Spl.Dy.Collector*¹ and *Varala*

¹ 2010 (4) ALD 202

*Ramachandra Reddy Vs. Mekala Yadi Reddy and others*², in support of his plea.

5. On the other hand, learned counsel for the respondents/ plaintiffs would submit that since liberty is given to the petitioner, by the Court below, to make a fresh application at the appropriate time, order under challenge needs no interference.

6. As seen from the record, earlier order of appointing the advocate commissioner was never challenged by the petitioner/ defendant.

7. As there was no objections raised, the advocate commissioner visited the site, issued notices to all the concerned and in their presence conducted the survey. Therefore, the argument of the counsel that the report of advocate commissioner cannot be accepted on the ground that commissioner should have conducted the survey with the help of mandal surveyor, cannot be accepted at this stage. It is pertinent to note that the plea of the defendant is that the plaint schedule passage is not existing on ground, in the said suit schedule survey number and plaint schedule property is part and parcel of the land. The Advocate commissioner, who inspected the site prepared a rough sketch, took photographs, prepared the C.D. of plaint schedule property and its surrounding locality which were filed along with his report.

8. Having regard to the above, the Court found that whether the said property is part and parcel of the defendant's land or whether it is a pathway, can be decided during the course of trial in the main suit. Infact, the trial Court categorically stated that if during the trial of the main suit, there is any ambiguity with regard to the physical features of

² 2010 (4) ALD 198

the property, then the petitioner-defendant was given liberty to make fresh application seeking revisit of the advocate commissioner or appointment of new advocate commissioner which would be decided by the Court on merits.

9. Therefore, when such a liberty is given to the petitioner by the Court below, there is no point in asking the advocate commissioner to re-visit the site and conduct re-survey with the help of mandal surveyor, at this stage.

10. Further in both the judgments referred to above, the question was as to whether permission can be granted for appointing the advocate commissioner, to verify the physical features of the property. But in the instant case, such an exercise has already been done. Hence, the judgments relied upon by the counsel would not apply to the instant case.

11. Accordingly, giving liberty to the petitioner, as granted by the Court below, the revision is disposed of. No costs.

12. As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.

Date:03.11.2017.
vnb

C. PRAVEEN KUMAR, J