

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.1075 of 2016

ORDER:

This is a revision, under Article 227 of the Constitution of India, by the unsuccessful petitioner/plaintiff assailing the orders, dated 2nd December, 2015, of the learned VII Senior Civil Judge, City Civil Court, Hyderabad, passed in I.A.No.659 of 2015 in I.A.No.214 of 2015 in O.S.No.2776 of 2010 filed by the petitioner/plaintiff under Section 151 of the Code of Civil Procedure, 1908, requesting to re-entrust the warrant to the already appointed Advocate-Commissioner with appropriate directions to dig a portion of the suit schedule property at appropriate places and to ascertain whether the drainage pipeline is passing through the same or not and file a report.

I have heard the submissions of learned senior counsel Mrs.Manjiri S. Ganu for petitioner and of learned Sri K.Mahipathi Rao, appearing for respondents.

I have perused the material record.

The facts as could be culled out from the material record and the submissions made before this Court, which are necessary for consideration, in brief, are as follows : “The plaintiff-Welfare Association brought a suit against the defendants for granting a decree declaring that the construction undertaken by the defendants in the existing approach road of their Paramount Classic Residential accommodation by misdescribing the same as premises No.13-6-437/1/B/26, situated at Khader Bagh, Hyderabad, is illegal and unauthorised and for grant of perpetual injunction. The defendants 1 and

2 are resisting the suit. At the instance of the plaintiffs, a Commissioner was appointed to note down the physical features of the suit schedule property and the said Commissioner, having inspected the property, filed his report on 16.09.2015. The Commissioner, in his report, has observed that there are two drainage manholes, one at the East and South corner and the other at the West and South corner of the plaint schedule property and that he got the covers of the manholes removed and observed the drainage pipe line and on such observation, it is clear that if the drainage line is dug up, the position of the manholes can be seen. He has shown the position of the manholes in the rough plan attached to his report. Subsequent to the filing of the Commissioner's report, the plaintiff filed the subject application with the aforementioned prayer *inter alia* stating that the Commissioner has observed two manholes and noted their positions but made evasive observations to the effect that the drainage line is going towards suit schedule property without specifically mentioning the existence of the drainage pipeline in the suit schedule property and hence it has become necessary to seek re-entrustment of the warrant for the purpose desired by the plaintiff.

The defendants, while resisting the said request of the plaintiff, *inter alia* contended and reiterated their defence that the width of the approach road is 20 feet but not 30 feet as being contested by the plaintiff and that the property in which the defendants are undertaking constructions is their ancestral property and the same was gifted to the defendants and that when a portion of the property was acquired by the Municipality, compensation was paid to the defendants and that no objections are filed to the Commissioner's report and when the suit is at the stage of arguments, the subject application

is filed to drag on the matter and that both parties submitted work memos to the Commissioner before executing the warrant and hence, the petition is liable for dismissal.

The trial Court dismissed the application filed by the plaintiff holding that no directions, as sought for by the plaintiff, can be given to the Commissioner while *inter alia* observing that despite posting the matter to 13.10.2015 for filing the objections, if any, of both sides, no objections are filed to the Commissioner's report.

Having been aggrieved of the said order, the plaintiff filed the present revision.

Learned senior counsel for plaintiff, while narrating the events and also the case of the plaintiff, which are already stated supra, would submit that if a portion of the lane wherever necessary is dug up and the existence or not of the pipeline underneath is noticed, the said course will be helpful to substantiate the case of the plaintiff and that even before the Commission petition is closed, the present application supported by the present affidavit is filed for re-entrustment of the warrant to the Commissioner for the purpose desired and therefore, filing of objections is not necessary in the facts and circumstances of the case and that the trial Court ought to have re-entrusted the warrant to the Commissioner as sought for.

Per contra, the learned counsel for defendants, while reiterating the case of defendants, which are already extracted supra, would submit that the plaintiff failed to file an approved layout or any other plan showing that there is a 30 feet approach road to the property and that in the facts and

circumstances of the case, the order of the trial Court is justified and the trial Court properly appreciated the facts and therefore the order does not brook interference.

I have bestowed my attention to the facts and given earnest consideration to the submissions.

In view of the facts and submissions narrated supra, there is no need to further dilate on the facts and contentions or restate the same. From the facts pleaded and contentions urged before this Court, it appears that the principal issue involved in the suit is as to whether the plaint schedule property is a part of the approach road being claimed by the plaintiff-welfare association. This is not the stage to appreciate or evaluate the evidence, which is already brought on record, and record any findings which will have a bearing on the merits of the issues settled for determination in the suit. Admittedly, a Commissioner was appointed; he made a local inspection and filed his report with a plan. In the Commissioner's report and plan, there is a reference to drainage manholes and the Commissioner got opened the manhole covers and examined the pipeline and made certain observations in his report which are already stated supra. To be more exact, the relevant observations in the Commissioner's report **verbatim** read as follows:

“I observed that on seeing the Western side drainage man-hole, the drainage pipe direction of its out-going is towards S.S.P. and it can be seen clearly if the drainage line is digged and the position of man-holes can be seen from the photographs which are filed alongwith my report.”

So, the Commissioner also made a passing reference about the requirement of digging up of the portions of the drainage line. In the well considered

view of this Court, if the Commissioner is re-entrusted with the warrant and if portions of the disputed property are dug up and if the Commissioner finds out the existence or not of any pipeline underneath the disputed property, that piece of evidence may be of some relevance and may provide an assured piece of evidence in support of the contentions of either of the parties and that assured piece of evidence along with the other entire evidence brought on record may ultimately be helpful to the Court in effectively adjudicating the issues involved in the suit. Coming to the contention of the defendants that objections are not filed to the commissioner's report, and that, therefore, the trial is correct Court in its observations, suffice if it is stated that the said contention needs no countenance for the reason that the Commissioner's report was filed before the trial Court on 16.09.2015 and the present application is filed immediately thereafter in October 2015, before the Commission petition was closed. Therefore, on the ground of non-filing of objections to the Commissioner's report, the plaintiffs' request need not be rejected. Coming to the contention that the plaintiffs' welfare association did not produce any plan or layout in support of the contention that there is a 30 feet road in existence, as already observed, it is not a stage to appreciate the evidence and record any findings on merits of the main matter. As already noted, in the facts and circumstances of the case and in view of the observations already made in Commissioner's report and the topographical details noted in the Commissioner's report and plan, it would be just and fair to consider the request of the plaintiff and re-entrust the warrant to the Commissioner for the purpose desired by the plaintiff, as such a course would meet the ends of justice.

On the above analysis, this Court finds that the order of the trial Court brooks interference.

In the result, the revision petition is allowed, the order impugned is set aside and I.A.No.659 of 2015 in I.A.No.214 of 2015 in O.S.No.2776 of 2010 on the file of learned VII Senior Civil Judge, City Civil Court, Hyderabad, stands allowed. The trial Court is directed to re-entrust the warrant to the Commissioner with appropriate directions for the purpose desired by the plaintiff. The trial Court shall not be influenced by any of the observations made by this Court in this order, while adjudicating the *lis* finally. The trial Court shall, in the warrant to be entrusted to the Commissioner, while giving appropriate directions, shall keep in mind that the defendants made some constructions and laid pillars in the disputed property, and therefore, the Commissioner shall execute the warrant entrusted, without causing any damage to such pillars and minimizing the damage to the possible extent.

No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M. SEETHARAMA MURTI, J

2nd January 2017

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