

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5307 of 2017

ORDER:

1) The present Civil Revision Petition is filed against an order dated 09.08.2017, passed in I.A.(SR) No.1397 of 2017 in I.A.No.322 of 2012 in O.S.No.107 of 2012 on the file of the Junior Civil Judge, Kothapeta, wherein the request of the petitioner/plaintiff to re-direct the advocate-commissioner to localize the plaint schedule property with the help of Divisional Surveyor, Amalapuram, by fixing actual points on four corners.

2) The facts in issue are as under:

The petitioner herein filed a suit seeking declaration of his title over the plaint schedule property and consequential relief of permanent injunction restraining the defendant from interfering with his possession and enjoyment. Pending suit, the petitioner filed an application for appointment of an advocate-commissioner to measure the properties with the help of Mandal Surveyor. The trial Court appointed an advocate-Commissioner, who filed his report before the trial Court. It is stated in the affidavit that the petition schedule property is triangle bit and the property of the defendant was situated on northern side in a different survey number. It is

said that on East there is Lolla Vadapalli Main Road, South is the PWD Canal and on western corner the plaintiff and defendant's property ending point. As such, the Commissioner has to complete his commission with the help of Divisional Surveyor to identify the actual point of southern side and northern side. Hence, seeks a direction to the advocate-commissioner to localize the plaint schedule property with the help of Divisional Surveyor, Amalapuram by fixing actual points on four corners.

3) A counter came to be filed by the defendant contending that the advocate-commissioner was appointed to note down the physical features of the property and to measure the same with the help of Mandal Surveyor. The Commissioner executed the warrant in the presence of both the parties and filed his report. It is said that the Commissioner identified the properties of both the parties and also fixed the boundary stones.

4) After considering the rival submissions, the trial Court dismissed the said application. Challenging the same, the present Civil Revision Petition came to be filed.

5) As seen from the record, the advocate-commissioner was appointed on earlier occasion with a direction to note down the physical features of the schedule property and

measure the property with the assistance of Mandal Surveyor. Accordingly, the advocate-commissioner executed the warrant in the presence of both the parties and filed a report. In the report, the Commissioner mentioned as under:

“The plaintiff’s property situated in R.S.No.178/ 8A for an extent of Ac.1.36 cents and in 178/ 9C for an extent of Ac.0.34 cents. The defendant’s property situated in R.S.No.177/ 3A for an extent of Ac.5.76 cents. I measured the schedule property and land of defendant with the help of F.M.B. and Old Survey stones and with the help of Mandal Surveyor and peg marks are affixed between the land of the plaintiff and land of the defendant as boundary line. A small canal was leading on the Southern side of the lands of plaintiff and defendant. A road was leading abutting the lands of plaintiff and defendant from Lolla to Vadapalli Village. As per survey, there are no encroachments from both sides.”

6) That being the position, the question of re-directing the advocate-commissioner to localize the plaint schedule property with the help of Divisional Surveyor, Amalapuram by fixing actual points on four corners, would not arise.

7) As observed by the trial Court, if really, the petitioner differed with the report of the Commissioner he can file his objections to the Commissioner Report and also has an opportunity to cross-examine the advocate-commissioner to elicit the truth, when he is in witness box.

8) Having regard to the above, I feel that the order under challenge warrants no interference. Accordingly, the Civil Revision Petition is dismissed, giving liberty to the petitioner to file objections and to cross-examine the advocate-commissioner to elicit truth, if he is otherwise entitled to.

9) Miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

24.11.2017
gkv

