

**HONOURABLE SRI JUSTICE P.NAVEEN RAO**

**CIVIL REVISION PETITION No.4236 OF 2017**

**Date: 21.09.2017**

Between:

Velpula Bikshapathi S/o Veeramallu, Aged 35 years,  
Occu: Business, R/o. H.No.23-3-131, Shayampet,  
Hanamkonda, Warangal District and another.

.....Petitioners/petitioners

and

Nagineni Jaganadha Rao, S/o Swamy Rao,  
Aged 55 years, occu: Employee, r/o 23-6-246,  
Tigerhills, JSM Colony, Shayampet, Hanamkonda,  
Warangal District.

.....Respondents/respondents



The Court made the following:

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**ORDER:**

Heard learned counsel for petitioners Sri C.A.R.Seshagiri Rao and learned counsel for respondents Sri Kaduru Prabhakar Rao.

2. Plaintiffs filed I.A.No.19 of 2017 in O.S.No.174 of 2008 on the file of I Additional Senior Civil Judge at Warangal under Order XXVI Rule 9 read with Section 151 of Code of Civil Procedure (CPC) praying to appoint an Advocate-Commissioner. The said IA was dismissed by order dated 20.07.2017. Assailing the same, this revision is filed under Article 227 of the Constitution of India.

3. The averments made in the plaint disclose that according to the plaintiffs, they have purchased the plot admeasuring to an extent of 933.33 square yards in Sy.No.584/A of Shayampet Jagir Revenue Village, Hanamkonda Mandal, Warangal district, more particularly described in the schedule appended to the suit. Petitioners narrated the history of flowing of title to their vendors. While so, respondents herein constructed compound wall forcibly on Southern side covering an area of 793.63 square yards by leaving about 139.70 square yards to the Eastern side and have also constructed three rooms towards Southern side of the compound and installed electricity meters. The pleadings would disclose that on the Northern side the compound wall was already constructed by the neighbour. The prayer sought in the suit is to declare the plaintiffs as owners to the suit schedule property and grant consequential relief of recovery of possession by directing the defendants to deliver the vacant possession. The averments in the

plaint would disclose that Mr. Chakrapani got surveyed the suit schedule property with the assistance of Mandal Surveyor and panchanama was conducted which would disclose that subject property is in Sy.No.584.

4. The claim of the plaintiffs is opposed by the defendants. According to the defendants, the land claimed by the plaintiffs belongs to the defendants. Defendants disputed the stand of the plaintiffs about the flowing of title. The averments in written statement would disclose that according to the defendants, the suit schedule property does not fall in Sy.No.584, but forms part of Sy.No.585/C. According to the defendants, the original pattadar of the land in Sy.No.584 was Sathu Mallaiah and he sold the entire extent of land during his life time and there was no land left with Chakrapani through whom the plaintiffs purchased the land.

5. The various averments in the plaint, written statement, in the affidavit filed in support of the IA and counter-affidavit, as noted by the trial Court, would disclose that the lands in Sy.Nos.584/A and 585/C were converted into house plots and several houses have come up. Even according to the plaint averments, the neighbour on the Northern side has already constructed a compound wall.

6. From the order of the trial Court, it is seen that the evidence of plaintiffs was completed and on behalf of defendants, DW.1 was examined and Exhibits B1 to B18 were marked. All the witnesses examined so far were also cross-examined and main suit was coming up for further evidence on behalf of the defendants. The material on record would disclose that it is not for the first time

during the course of recording of evidence new pleas are raised by the defendants regarding extent of land, ownership and flow of title. It was clear and categorical assertion of the defendants from the beginning that the land which plaintiffs sought is in different survey number and the land which defendants are in possession is in different survey number. The trial Court noticed that as the land was converted into house plots and several houses have come up, it would be very difficult to undertake exercise of conducting of survey of entire extent of land in survey numbers mentioned by the parties. The trial Court also expressed that there are many other owners of the properties in those survey numbers and none of them are parties to the suit and, therefore, conduct of survey would invite third party interest and lead to further litigation. Trial Court also held that unless survey was conducted to the entire land in Sy.Nos.584 and 585, demarcation and fixation of boundaries cannot be made. Having regard to these peculiar facts, trial Court rejected the application to appoint Advocate-Commissioner to demarcate and fix the boundaries.

7. In other words, as noted above, what is sought by the petitioners in support of the application for appointment of Advocate-commissioner is not confined to the suit schedule property i.e., the alleged illegal occupation by the defendants to an extent of 793.673 square yards, but to conduct survey and demarcate the boundaries of land in Sy.Nos.584/A and 585/C.

8. Extensive submissions were made by the learned counsel. Learned counsel for petitioners contended that in order to localize and identify the property in issue the survey is necessary and

conducting of such survey would enable the Court to come to a correct conclusion. According to the learned counsel, when there is a specific objection raised by the defendants that the property claimed by the plaintiffs is not falling in Sy.No.584, but is part of Sy.No.585/C, it is necessary to order for conducting of survey and trial Court erred in not appreciating the said objection. Unless the Advocate Commissioner is appointed and survey conducted, grave prejudice would be caused and the same is irreversible.

9. In support of the said contention, learned counsel for petitioners placed reliance on the following decisions:

- i) **Badana Mutyalu and another v. Palli Appalaraju**<sup>1</sup>;
- ii) **Velaga Narayana and others v. Bommakanti Srinivas and others**<sup>2</sup>;
- iii) **Bandi Samuel and another v. Medida Nageswara Rao**<sup>3</sup>; and
- iv) **Jammi Venkata Krishna Rao and others v. Jammi Venkata Hanuma Ravindranath**<sup>4</sup>.

10. Per contra, learned counsel for defendants contended that what is sought by the plaintiffs is nothing but amounting to gathering of evidence under the guise of conducting survey. According to the learned counsel, it has been the stand of the defendants from the beginning that the land claimed by the plaintiffs is not in the same survey as claimed by them. According to the assertion of the defendants, there was no land left to be sold as the original pattedar sold the entire extent of land and his successor did not have any land left to be sold and false documents were created as if land was purchased by them.

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<sup>1</sup> 2013 (5) ALD 376

<sup>2</sup> 2014 (3) ALD 605

<sup>3</sup> 2017(1) ALT 493

<sup>4</sup> 2016 (5) ALT 14

11. Several contents urged on either side are required consideration in the pending suit. No opinion can be expressed at this stage on the rival claims.

12. At this stage, the only issue for consideration is whether the decision of the trial Court referring to order appointment of Commissioner to conduct survey is perverse warranting interference by this Court.

13. In **Badana Mutyalu** (supra), the learned single Judge of this Court upheld the directions issued by the trial court to appoint Commissioner to localize the suit schedule land. The facts as noted therein would disclose that petitioners and respondent are neighbours and the house of petitioners was to the northern side of the property of the respondent. It is alleged that property belongs to the respondent was being interfered by the petitioners and, therefore, it was incumbent for the Court to decide whether the disputed land is localize and whether or not it forms part of the property claimed by the respondent. Having regard to the facts of that case, learned single Judge of this Court held that trial Court has not committed any jurisdictional error warranting interference.

14. In **Velaga Narayana** (supra), suit for bare injunction was instituted. In the year, 2012, plaintiff filed IA for appointment of Commissioner for localizing the plaint schedule land and the same was dismissed on the ground that there was suppression of fact of pending crimes. Plaintiff again filed IA in the year 2013 for appointment of Commissioner to survey the lands in Sy.Nos.257 and 280. Said application was dismissed by the trial Court on the

ground that already survey was conducted by the Inspector of Survey and Land Records. However, it appears, in the mean time, the Tahsildar requested the Assistant Director, Survey and Land Records to re-conduct the survey in Sy.Nos.257/D and 280. Plaintiff alleged that Mandal Surveyor without conducting proper survey, wrongly reported that the plots of plaintiffs were in Sy.No.280, whereas those plots were in Sy.No.257/D. However, their IA was dismissed by the trial Court. In the given facts of the case, appointment of Advocate-Commissioner for the purpose of localizing the suit land was held necessary.

15. In **Jammi Venkata Krishna Rao**, the objection raised against order passed by the trial Court was, petitioners was seeking appointment of Commissioner only to gather evidence. Specific plea raised by plaintiff was that in the earmarked portion, there was a joint pathway and an attempt was made to close the pathway and obliterate the physical features of the property. The trial Court took note of this contention to appoint Commissioner to note physical features. Having regard to the facts of the case and plea of plaintiff on altering the physical features, this Court observed that it enables the Court to understand the physical features of the suit property which existed as on the date of filing of suit.

16. In **Bandi Samuel** (supra), having found the Court below has not considered the issue properly, liberty is granted to the plaintiffs to file fresh petition and to consider the matter thereon.

17. Order XXVI Rule 9 of CPC vests discretion in the trial Court to appoint Commissioner, to record physical features of the suit

schedule properties and/or to localize the disputed property, if the trial court is of the opinion that such report is necessary for proper adjudication of the dispute. However, such discretion has to be exercised in judicious manner. Trial Court has to ensure that Commissioner Report is necessary to have effective resolution of dispute, but not intended to gather evidence or to resurrect a lost cause in disguise. In what circumstances such discretion can be exercised depends on facts of the given case.

18. A bare perusal of the facts noted above would disclose that suit property is identified with boundaries. According to the plaintiffs, they are the owners of the entire extent of land i.e., 933.33 square yards, whereas defendants forcibly occupied 793.63 square yards of the above extent, constructed compound wall and rooms. It is not explained as to why the plaintiffs wanted conducting of survey for the entire extent of land covering Sy.Nos.584/A and 585/C, more particularly when the land was converted into house plots and several houses have come up.

19. Suit is of the year 2008 and in the plaint, the plaintiffs have clearly stated that portion of land owned by them was illegally occupied by defendants and constructed compound wall and rooms. They have indicated the boundaries of the suit schedule property. Written statement was filed in August, 2008, where they have explicitly stated how they have acquired ownership and in which survey number the subject land is situated. Thus, it is not an issue suddenly came up after the evidence was recorded, for the plaintiffs to file this application in the year 2017.

20. As noted by the trial Court, when there are several other owners in the Sy.Nos.584/A and 585/C, who are not parties to the suit, whereas the conduct of survey sought is to entire extent of land in those survey numbers, in the absence of those persons, conducting of survey can lead to more complications and further litigation than it seeks to resolve the issue inter-parties. If petitioners confined their grievance to localize the suit schedule property, which petitioners are claiming as belonging to them probably the lower Court could have granted the prayer to appoint Advocate Commissioner, but as the relief sought by the plaintiffs is to conduct survey of larger area than what is actually claimed, denial of the prayer for appointment of Advocate Commissioner, for the reasons assigned by trial Court, cannot be said as amounting to erroneous/perverse decision warranting interference by this Court.

21. Civil Revision Petition is accordingly dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

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**JUSTICE P.NAVEEN RAO**

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