

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Civil Revision Petition No.2410 of 2015

ORDER:

This is a civil revision petition, under Article 227 of the Constitution of India, by the respondents-defendants assailing the order, dated 25.03.2015, of the learned Senior Civil Judge, Srikalahasthi, passed in IA.no.202 of 2015 in OS.no.44 of 2009 filed by the petitioner-plaintiff under Order XXVI Rules 9,10 & 12 read with Section 151 of the Code of Civil Procedure, 1908, requesting 'to either re-entrust the warrant to the same Commissioner or appoint a new Commissioner to fulfil the directions issued by the Court in the warrant issued in IA.no.1031 of 2014'.

2. I have heard the submissions of Sri Challa Gunaranjan, learned counsel appearing for the revision petitioners-defendants and of Sri I.V. Radhakrishna Murthy, learned counsel appearing for the respondent-plaintiff. I have perused the material record.

3. The parties shall hereinafter be referred to as the plaintiff and the defendants for convenience and clarity.

4. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The plaintiff brought the suit against the defendants for declaration of title in respect of the plaint schedule property and recovery of possession of the same and other reliefs. To substantiate the material averments made in the plaint in support of the said claims in the suit, the plaintiff sought appointment of an advocate commissioner in the first instance for localisation of the plaint schedule property and identifying it on land within the specific boundaries

mentioned in the plaint schedule. The trial Court appointed an advocate commissioner to fix the boundaries of the plaint schedule property and also note down its physical features and constructions, if any, thereon with the assistance of a Mandal Surveyor. Based on the Mandal Surveyor's report, the Commissioner returned the warrant saying that it is not possible to identify the suit schedule land. Aggrieved thereof, the plaintiff filed another application to direct the Commissioner to localise the plaint schedule property with the assistance of the Surveyor of the District. That petition was also allowed and the Commission warrant was re-entrusted to the advocate commissioner to identify the suit schedule property as per the warrant directions. Accordingly, the commissioner executed the warrant with the assistance of District Surveyor after securing the necessary documents of the parties as well as the relevant revenue records from the revenue authorities. However, the Assistant Director, Survey and Land Records, Chittoor, was not able to identify the suit schedule property on ground and therefore specific measurements of the property were not taken and a report was accordingly filed. Despite the Commissioner thus visiting the property twice, pursuant to the orders of the trial Court, the plaint schedule property could not be identified and localised. Therefore, the plaintiff again filed objections to the Commissioner's report and thereafter filed the subject application before the trial Court seeking the aforementioned relief. The said application was resisted by the defendants, *inter alia*, contending that the Commissioner made visits twice to the property but the property could not be identified and that, in the facts and circumstances of the case, the Court again cannot aid the plaintiff by re-entrusting the warrant to the same Commissioner and that it is not possible to identify the plaint schedule property and that the defendants constructed a big factory in the factory site and that the suit is of the year 2009 and that at one stage the suit was also posted for judgment when both the parties failed to advance arguments and that the suit is now coming for arguments and that at

this advanced stage the subject petition is filed with a *mala fide* intention to drag on the matter and hence, the petition is devoid of merit and the Commissioner cannot be appointed. The trial Court having considered the facts and circumstances peculiar to the case allowed the application and appointed a Commissioner for the purpose desired by the plaintiff. Aggrieved thereof the defendants are before this Court.

5. The learned counsel for the defendants while reiterating the contentions of the defendants, which are adverted to supra, submits as follows:

The present attempt of the plaintiff is a third attempt with regard to the identification of the plaint schedule property. His earlier two attempts proved futile. When a third attempt was made, the trial court erroneously considered the request of the plaintiff despite the fact that the suit schedule property is not identifiable on land. At any rate a commissioner's report is not a substantive piece of evidence and it will at best only assist the Court in analysing the oral and documentary evidence already brought on record and the said opinion evidence is not unnecessary for adjudication of the *lis*. The plaintiff has to prove her case as per title documents. The court has earlier observed that exhibit A4, FMB, is filed into Court. The court below instead of acting on the Commissioner's reports already filed wrongly allowed the subject application filed for the same relief. The order impugned is liable to be set aside.

6. Per contra, learned counsel for the plaintiff while reiterating the contentions of the plaintiff, which are already stated supra, and while supporting the orders of the Court below would contend as follows:

The defendants established a big factory. And while establishing the factory and constructing the necessary buildings for the factory, the defendants encroached upon and grabbed the plaint schedule property of the plaintiff. The defendants are corporate giants and they are rich, powerful and influential

people, whereas the plaintiff is a poor person. Unless the property is identified and located from out of the huge factory site, it is impossible to recover possession of the property even if eventually the plaintiff's title is declared and the suit is decreed. It is for the revenue authorities, who are assisting the Commissioner, to identify the property of the plaintiff as it is not the case of either of the parties that no property as being claimed by the plaintiff was ever in existence. The trial Court having noted the evidence already brought on record including that of the Advocate Commissioner, who is examined as a witness, rightly appointed the Commissioner by keeping in view the scope of the *lis* and by appreciating the facts correctly and the necessary evidence in the proper perspective and that therefore the order needs no interference.

7. I have bestowed my attention to the facts and given earnest consideration to the submissions. The facts, contentions and submissions made, which are discussed supra, in detail, need no reiteration. In a suit for declaration of title and recovery of possession, it is necessary that the property within specific boundaries should be identified; and unless the property is identifiable neither a decree for perpetual injunction nor a decree for recovery of possession can be granted. If on evidence brought on record the Court finds that the plaintiff is entitled to the decree as prayed for and eventually grants a decree and if the property is not identifiable on land at the time of execution of the decree and delivery of possession of the property, then the whole exercise becomes infructuous. Simply because the defendant's factory site is a huge site and that certain factory buildings are constructed there on, the plaintiff's grievance that her site is within the precincts/confines of the site covered by the factory cannot be left without being redressed. The settled common law principle is 'Ubi Jus Ibi Remedium'. This Latin legal maxim means "where there is a right there is a remedy". The basic principle contemplated in the maxim is that, when a person's

right is violated the victim will have an equitable remedy under law. The maxim also states that the person whose right is being infringed has a right to enforce the infringed right through any action before a court. All law courts are also guided by the same principle. The fact that the factory was established by the defendants in a huge extent of site is not in dispute. The plaintiff is claiming Ac.4.94 cents of land, more fully described in the schedule annexed to the plaint, by virtue of the registered sale deed of the year 1961 and other documentary evidence, which is the basis for the suit claim. The grievance of the plaintiff is that while establishing the factory, the defendants, who are rich, powerful and influential people encroached upon the plaintiff's property and that therefore the plaintiff's property is included in the factory site. Therefore, unless the plaint schedule property is localised and is identified within the boundaries mentioned in the plaint schedule, with the aid of the necessary revenue records and with reference to the documents not only of the plaintiff but also of the defendants and by availing the services of a competent surveyor, it would be difficult for the plaintiff to eventually identify her property on land even if the plaintiff's title is upheld and the suit is decreed. It is for the revenue authorities to provide proper assistance to the Commissioner and see that the property of the plaintiff is identified before the issues settled for determination in the suit are finally answered, as identification of the property is very much essential for resolving the issue as to whether the plaintiff's property is included in the factory site or not. A perusal of the order of the Court below shows that after considering the peculiar facts and circumstances of the case, the Court below appointed another advocate Commissioner to fulfil its earlier directions in its warrant and to ultimately see that the plaintiff's property in respect of which the relief of declaration of title and recovery of possession are being claimed is identified on land and is localised.

8. On the above analysis, this Court finds that the trial Court is justified in passing the impugned order and that the order does not brook interference.

9. In the result, the Civil Revision Petition is dismissed confirming the order of the trial Court.

Miscellaneous petitions pending, if any, also shall stand dismissed. There shall be no order as to costs.

02.01.2017
Vjl

M. SEETHARAMA MURTI, J

