

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.921 of 2017

Date 02.06.2017

Between:

Grosu Chaitanya Krishna.

... Petitioner

AND

Gandlapalli Prauna and another.

.....Respondents



HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.921 of 2017

ORDER:

This Civil Revision Petition is filed questioning the order dated 24.01.2007 passed in I.A.No.1002 of 2016 in O.S.No.474 of 2012 on the file of III Additional Junior Civil Judge, Nellore. Vide order impugned, learned Junior Civil Judge allowed the prayer of respondents – defendants for appointment of an advocate commissioner to measure the suit schedule property with assistance of municipal surveyor and to fix boundaries of it.

Learned Counsel for the petitioner contends that the petitioner – plaintiff filed suit for injunction in respect of an extent of 100 ankanams, which was purchased under registered sale deed in the year 1995; respondents – defendants admit the petitioner – plaintiff to be owner and have right over 100 ankanams; respondents – defendants filed suit in O.S.No.47 of 2015 seeking recovery of certain extent of land which would go to show that the petitioner is in possession and enjoyment of the suit schedule property; as such, allowing appointment of advocate commissioner for measuring suit schedule property would amount to gathering evidence on behalf of respondents – defendants; and, therefore, the order of the learned Judge is illegal and liable to be set aside.

Smt K.Pallavi, learned counsel for respondents, had scrupulously taken through the material on record and would assert that, in so far as petitioner – plaintiff is concerned, his right is only to the extent of 100 ankanams and the respondents do not have any objection for enjoyment in respect of his property but, however, he played fraud by misusing legal process and filing suit and, having obtained temporary injunction, highhandedly encroached into part of the land of respondents - defendants over an extent of Ac.0.73 cents, over and above 100 ankanams belonging to the petitioner; in the written statement, the petitioner had made the said aspect clear; respondents – defendants filed suit for recovery of Ac.0.73 cents of land in occupation of the petitioner, apart from seeking mandatory injunction, by way of counter claim, in the suit filed by the petitioner for removal of illegally constructed compound wall; in his cross-examination, PW.1, in fact, had categorically asserted that he has no objection to appoint advocate commissioner and to measure the suit schedule property; and, taking into consideration, all these aspects, the Court below allowed the I.A. for appointment of advocate commissioner to inspect the suit schedule property.

Considered the respective submissions. The facts, as set out above, are not in dispute. The suit, filed by the petitioner – plaintiff, is to injunct respondents – defendants from interfering with his property which have specified

boundaries with a definite extent. It is not in dispute that the respondents – defendants are the neighbours and adjacent owners of the subject property. It is the contention of the respondents – defendants that, compound wall has since been constructed by the petitioner having obtained temporary injunction, respondent prayed for grant of mandatory injunction, by way of counter claim, for removal of compound wall. Whether the petitioner occupied the land belonging to the respondents and, if so, to what extent he had occupied could be ascertained only by physical inspection and measurement of the subject property. However, this could not be done by the Court itself, the aid of the advocate commissioner, assisted by surveyor, is necessary. Disputes of this nature cannot be resolved without physical inspection and measurement of the property. It must be borne in mind that the respondents – defendants, apart from denying interference with the petitioner's right over the suit schedule property, also laid a counter claim specifically seeking mandatory injunction of removal of compound wall. However, for deciding the right of the petitioner, appointment of advocate commissioner may not be necessary but, for the purposes of determining whether there were any encroachments by the petitioner and, if so, to what extent he had encroached can only be ascertained by physically inspecting the subject property and conducting survey.

It is well settled by this Court in **Velaga Narayana v. Bommakanti Srinivas**¹ **Nambada Varaha Narasimhulu v. Karanam Dalamma**² and **Bandi Samuel v. Medida Nageswara Rao**³ and as well as the Supreme Court in **Haryana Wakf Board v. Shanti Sarup**⁴ that, to resolve the controversy in issue, appointment of commissioner cannot be found fault with. In fact, this Court can go to the extent that the disputes of this nature can be resolved with the aid of external agencies assisted by technical persons as otherwise merely placing oral and documentary evidence which, in given cases, may not capture true position. In the circumstances, I see no reason to interfere with the order under revision.

Accordingly, the Civil Revision Petition is dismissed.

Miscellaneous Petitions pending, if any, in this revision petition shall stand closed.

CHALLA KODANDA RAM,J

Date:02.06.2017
usd

¹ 2014(4) ALT 152

² 2014(6) ALT 94

³ 2017(1) ALT 493

⁴ (2008) 8 SCC 671