

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION No.4929 OF 2017

DATED : 20.11.2017

Between :

Nalla Nagi Reddy S/o.Ramaiah,
Aged 50 yrs, Occu : Agriculture,
R/o.Raghavapur, Palakurthy Mandal,
Warangal District.

.. Petitioner/Defendant No.4

And

Pasunuri Satyanarayana S/o.late Narsaiah,
Aged 65 yrs, R/o.Palakurthy Village and Mandal,
Warangal District & others.

... Respondents



This court made the following :

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ORDER:

Petitioner herein is the 4th defendant in O.S.No.166 of 2012. First respondent/plaintiff filed suit for specific performance of agreement of sale dated 19.12.2000 said to have been executed by the first defendant in favour of plaintiff in respect of 20 guntas of land in Sy.No.537/B (Part) of Warangal town. In the suit, the plaintiff also sought declaration of gift deed dated 13.02.2008 as null and void.

2. It appears, on 12.02.2008 the first defendant in the suit executed gift deed in favour of the 3rd defendant in respect of the same property. Consequently, on 16.02.2010 the 3rd defendant executed a registered sale deed in respect of 840 square yards and sale agreement-cum-GPA in respect of 1580 square yards in favour of the 4th defendant. On 14.11.2013, issues were framed and the suit is at the stage of chief examination of plaintiff/P.W.1. At that stage, I.A.No.464 of 2012 was filed under Order 26 Rule 9 r/w.Sec.151 of Code of Civil Procedure, to appoint an advocate commissioner to inspect the suit land shown in the enclosed schedule and record the physical features including 19 RCC pillars existing on the suit land and prepare a rough sketch of the suit land and file a report.

3. This I.A., was hotly contested and on due consideration of the respective submissions, the Court below appointed Sri K.Ravinder Reddy, Advocate, Jangaon, as commissioner to inspect the suit land and report to the Court whether there exists 19

pillars in the suit land. Aggrieved thereby this revision is filed by the 4th defendant.

4. Heard Sri K.Raghuveer Reddy, learned counsel for the petitioner/4th defendant and Sri Subba Rao Korrapati, learned counsel for the first respondent/plaintiff. Learned counsel for the petitioner states that respondents 2 to 4 are not necessary parties to this revision.

5. Learned counsel for the petitioner submits that petitioner earlier instituted O.S.No.16 of 2010 pending on the file of Senior Civil Judge's Court, Jangaon, for injunction against the daughter of the first respondent (Plaintiff). I.A.No.81 of 2010 was filed to grant temporary injunction. By order dated 30.04.2010, temporary injunction was granted. C.M.A.No.39 of 2010 preferred against the said order was dismissed by the first appellate Court by order dated 05.08.2010. C.R.P.No.4380 of 2010 preferred against the said order in CMA, was also dismissed by this Court. Learned counsel therefore, submits that as a consequent to the injunction granted in his favour in the pending suit, the petitioner herein is in possession and enjoyment. Therefore, the question of conducting physical inspection of the suit property and to find out whether pillars exists on the suit property does not arise and this application is filed only to gather the evidence and the same is not permissible in law.

6. Learned counsel further submits that all this is intended to frustrate the injunction granted in his favour in the pending suit and intended to drag on the proceedings.

7. Sri Subba Rao Korrapati, learned counsel for the first respondent submits that what is contended by learned counsel for the petitioner is not true. As a consequent to the gift deed executed, learned counsel for the first respondent submits that, on payment of full sale consideration an agreement was entered into and the original sale deed earlier executed by the plaintiff in favour of 4th defendant was also handed over to the plaintiff along with the possession and therefore, consequential steps were taken by the plaintiff in gifting the property. The petitioner herein is not in possession and in fact on obtaining due permission building construction was taken up. In order to ascertain true facts, the petition is filed to show that construction activity is going on.

8. At this stage learned counsel for the petitioner submits, in fact petitioner applied for the building permission and construction activity is taken up by the petitioner. Though both counsel sought to contend that respective parties are undertaking construction in the suit schedule property, a bare perusal of the operative portion of the order against which this revision is filed, would show that the Court below only wanted the Advocate Commissioner to inspect the suit land and to report whether there exists 19 pillars in the suit land as claimed by the plaintiff. No direction was issued to the Commissioner to file report on possession and ownership of the suit schedule property. By calling for such report the respective claims of the parties are not affected. Moreover as contended by learned counsel for the petitioner, the petitioner has instituted O.S.No.16 of 2010 and obtained injunction order and the said injunction order is subsisting. Therefore, there is no cause for apprehension as sought to be projected in this revision.

9. Since the order is in clear terms, this Court is not inclined to interfere with the said order at this stage. However, it is made clear that merely because such report is filed, it would not adversely affect the respective claims of the parties as already projected in the pending suit.

10. With the above observations, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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

20th November 2017
Rds



P.NAVEEN RAO,J