

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.5164 of 2016

ORDER:

This Civil Revision Petition is filed by the petitioner/defendant No.2 challenging the order dated 06.09.2016 in I.A.No.77 of 2016 in O.S.No.26 of 2014 wherein the learned Judge dismissed the petition filed by the petitioner/D.2 to appoint an advocate commissioner to note down the physical features of the suit schedule property and to localize plot Nos.225 and 415 as per the layouts prepared in the year 1988 and 1994 in Sy.No.958/2 of Gunthapalli Village fields, Badvel with the help of Mandal Surveyor, Badvel.

2 a) Brief facts of the case are that petitioner/D2 and some others made applications to the MRO, Badvel for grant of house sites. After due enquiry the MRO assigned Ac.0.03cts in Plot No.225 under DKT patta H.S.No.414/1403 dt.31.10.1994 and ever since he has been in possession and enjoyment of the same by erecting hut, but due to heavy rains it was badly damaged; he could not construct a pucca house due to lack of funds. While so, the plaintiff filed the suit with false and untenable grounds wherein the present petition was filed by the petitioner/D2 for appointment of advocate commissioner to note down the physical features and localization of the suit schedule property with the help of Mandal Surveyor.

b) Opposing the petition, plaintiff filed counter contending that appointment of advocate commissioner for localization of suit schedule land

is untenable because the Tahsildar, Badvel basing on the report of the Mandal Surveyor changed the four plot numbers and divided them into six plots starting from Vanka towards the Western side road. Hence, if the petitioner/D2 has any grievance, he should have gone in revision but cannot seek for appointment of advocate commissioner. He thus prayed to dismiss the petition.

c) The trial Court observing that dispute between the parties was with regard to the plot number but not with regard to boundaries or other physical features and the said controversy can be decided basing on the material placed on record by both the parties and there was no need to appoint an advocate commissioner and accordingly dismissed the petition.

Hence, the present revision.

3) Heard arguments of Sri Ch.Janardhan Reddy, learned counsel for petitioner and Sri P.Ravi Kiran, learned counsel for respondent No.1. Respondents 2 to 4 are not necessary vide cause title.

4) The point for determination is:

“Whether there are merits in the CRP to allow?”

5) **POINT:** Upon hearing both sides and perusal of the record and impugned order, it must be said that this Court is unable to agree with the finding arrived at by the trial Court. It is to be noted that in O.S.No.179 of 2007 the 1st respondent/plaintiff sought for injunction in respect of Ac.0.03cts site covered by plot No.415 in Sy.No.958/2 with specific

boundaries. She showed the petitioner/D2 as her eastern boundary owner. Her case is that she is the landless poor lady and on her request the revenue authorities have assigned house site and issued DKT patta on 28.09.1997, over which earlier she constructed a hut which was collapsed due to rains and again when she started to construct a pucca house, the petitioner/2nd defendant along with other defendants asked her to sell the suit site to him when she refused, he tried to meddle with her property.

a) Be that it may, while denying the plaint averments, the specific case of the petitioner/D2 is that the revenue authorities assigned plot No.225 to him on 31.10.1994; plot No.226 to D4; plot No.227 to D3 and plot No.228 to one Dasari Subba Rayudu and ever since assignment they have been in possession and enjoyment. His further case was that due to heavy rains in 1999 the huts raised by them were collapsed and the defendants and Dasari Subba Rayudu laid foundation in their respective plots to construct pucca house, but could not complete the construction due to paucity of funds. While so, the 1st respondent/plaintiff and her son approached the defendants and Dasari Subba Rayudu and requested them to sell their respective plots to her about 10 years back but they refused. Hence, they bore grudge against the defendants and got fabricated the house site patta in the name of plaintiff. It is his further specific case that plot No.415 is not in existence according to lay out prepared in 1994 and even if such plot is in existence, it is some where else than the suit locality. His grievance is that the plaintiff unduly claims right over the suit of petitioner/D2. It is note worthy while plaintiff showed petitioner/D2 as her eastern boundary owner, petitioner/D2

did not show as his western boundary owner in respect of plot No.225, but he showed western boundary as street.

b) Thus the contention of petitioner/D2 is crystal clear. He is the owner of plot No.225 assigned for Ac.0-03 cts and plot No.415 is not in existence in suit locality and even it is in existence, it may be somewhere else and plaintiff tries to usurp his plot No.225. It that view of the matter, the rub of the issue is the physical location of plot Nos.225 and 415 on ground. The information as to whether plot Nos.225 and 415 are one and the same on ground or whether they are two different plots and if so they are located in juxtaposition or at two different locations is essential to decide the suit. No doubt, both the parties have adduced evidence and most importantly the evidence of PW4 was before the Court. The question is whether his evidence has given any semblance of clarification on the above issues is the point.

c) A perusal of his evidence would show that previously there were four plots i.e. 225, 226, 227 and 228 and subsequently in the revised layout, those plots were revised as 225, 226, 227, 228, 414 and 415. His evidence would further show plot No.225 is allotted in the name of petitioner/D2 and as per Ex.X5 the name of the plaintiff was not there in any plot. According to him, the Surveyor conducted survey on 09.08.2010 in respect of plot Nos.225 and 415 in sy.No.958/2 on the application of the plaintiff and submitted report on 10.08.2010. As per his survey report, plot Nos.225 and 415 are located in the same location. He stated DKT patta was issued to the

plaintiff under Ex.A1, but no boundaries are mentioned for the land assigned to plaintiff under Ex.A1.

d) So, his evidence would show plot Nos.225, 226, 227 and 228 were revised into six plots i.e. 225, 226, 227, 228, 414 and 415. If it was done so, whether notices were issued to the concerned parties before reallocation and whether the extents originally assigned to the concerned parties were reduced during the reallocation are the questions which the Court has to consider. Even for the limited purpose of commissioner petition, such division of four plots into six is accepted, still the question would be what is the ground location of those six plots, more particularly the dispute plot Nos.225 and 415. It is no doubt, the evidence of PW4 would show plot Nos.225 and 415 are located in same location. That is not sufficient in view of claim of petitioner/D2 that plot No.415 is not in existence in the suit locality. Unless physical location of plot Nos.225 and 415 on ground is determined, in the considered view of this Court it is difficult for the trial Court to resolve the respective contentions of the parties.

6) The trial Court unfortunately came to a conclusion that evidence on record is sufficient to decide the *lis*, which is incorrect. The dismissal of previous commissioner petition will not come in the way. The earlier commissioner for whatever reason, could not execute the warrant and no purpose was served on his appointment. Considering all these aspects the impugned order is set aside.

7) In the result, the Civil Revision Petition is allowed by setting aside the order dated 06.09.2016 in I.A.No.77 of 2016 and the said IA is allowed and trial Court is directed to appoint an Advocate Commissioner to localize plot Nos.225 and 415 and fix up their ground location with boundaries with the assistance of MRO and Mandal Surveyor and with relevant records. The advocate commissioner shall answer the work memos submitted by both parties and file a comprehensive report. The entire exercise shall be completed within one month from the date of receipt of copy of this order. Thereupon, the trial Court shall dispose of the suit on merits within two(2) months from the date of filing of the report. No costs.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

Date: 13.06.2017
Murthy

**U. DURGA PRASAD RAO, J**