

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NOS.971, 982, 1123 & 1131 OF 2017

Date: 17.08.2017

CRP No.971 of 2017:

Between:

Gudiboina Narayana, S/o Ramulu, Aged about 45 years,
Occu: Govt.Teacher, R/o H.No.3-5-9, Hanuman Bazar,
Mahabubabad, Warangal district and another

.....Petitioners/
Respondents 1 & 2

and

Bayya Padma w/o Sarangapani, Aged about 40 years,
Occu: Housewife, R/o H.No.1-7-17/C, Sundaraiah Nagar,
Mahabubabad, Warangal District.

.....Respondent/
plaintiff



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NOs.971, 982, 1123 & 1131 OF 2017

COMMON ORDER:

The issue in I.A.Nos.372 & 374 of 2016, and I.A.Nos.373 & 375 of 2016 are identical. The core issue for consideration in these two sets of CRPs being same, they are heard together and disposed of by this common order.

2. Heard Sri A.Prabhakar Rao, learned counsel for petitioners and Sri B.Vijaysen Reddy, learned counsel for respondents in all revision petitions.

3.1. Petitioners in C.R.P.Nos.971 and 1131 of 2017 are the respondents/defendants. In these two revision petitions, petitioners challenge the decision of trial Court in allowing I.A.Nos.372 and 373 of 2016. I.A.No.372 of 2016 is filed to re-open the suit for plaintiffs' evidence for ascertaining the truth of material facts in dispute in the suit land and locate the suit schedule property as to the survey numbers in which the suit land is situated. I.A.No.373 of 2016 is filed praying to appoint an Advocate-Commissioner for identification of the land in Sy.Nos.145, 146, 149 and 150 with the assistance of Assistant Director of Survey and Land Records, Mahabubabad along with Tippons of those survey numbers for ascertaining the real facts and locate the suit schedule property for proper adjudication.

3.2. Respondent/plaintiff instituted O.S.No.14 of 2012 pending on the file of Principal Junior Civil Judge at Mahbubabad praying to grant permanent injunction against the defendants from

interfering with peaceful possession and enjoyment of the plaintiff over the suit schedule property. As described in the suit schedule, the extent of land claimed to be in possession of the plaintiff is Ac.0.27³/₄ guntas in Sy.No.145/1 of Gummudur village, Mahabubabad Mandal in the erstwhile Warangal District. The schedule also describes the boundaries. The averments of the plaint would disclose that the plaintiff claims as absolute owner and in possession of the land above mentioned, having purchased the same from three sons of original pattedar late Vankudoith Aalia, through a registered sale deed bearing No.8773/2011 dated 10.09.2011. Consequent to the registration of deed of transfer, plaintiff applied for mutation to Tahsildar, Mahabubabad in her favour and for issuance of Pattadar Pass Book and Title Deed Book and the issue is pending consideration of the concerned Tahsildar. While so, it is alleged in the plaint, the defendants hatched a crooked plan to grab the suit schedule property and on 05.02.2012 an attempt was made by the defendants to remove the boulders existing in the suit schedule property, but the same was resisted. It is further alleged that on 12.02.2012, similar effort was made, but the plaintiff and the adjacent land owners resisted the same. The defendants challenged the plaintiff that they would enter into the suit schedule property and would dispossess her. It is averred that defendants are strangers to the suit schedule property and they should be stopped from interfering with the peaceful possession and enjoyment of the suit schedule property.

4.1. Petitioners in C.R.P.Nos.982 and 1123 of 2017 are the respondents/defendants. In these two revision petitions, petitioners challenge the decision of trial Court in allowing

I.A.Nos.374 and 375 of 2016. I.A.No.374 of 2016 is filed praying to re-open the suit for plaintiffs' evidence for ascertaining the truth of material facts in dispute in the suit land and locate the suit schedule property as to the survey numbers in which the suit land is situated. I.A.No.375 of 2016 is filed praying to appoint an Advocate-Commissioner for identification of the land in Sy.Nos. 145, 146, 149 and 150 with the assistance of Assistant Director of Survey and Land Records, Mahabubabad along with Tippons of those survey numbers for ascertaining the real facts and locate the suit schedule property for proper adjudication.

4.2. Respondent/plaintiff instituted O.S.No.47 of 2014 pending on the file of Principal Junior Civil Judge at Mahbubabad praying to grant permanent injunction against the defendants from interfering with peaceful possession and enjoyment of the plaintiff over the suit schedule property. As described in the suit schedule, the extent of land claimed to be in possession of the plaintiff is Ac.0.14 guntas in Sy.No.150/2 of Gummudur village, Mahabubabad Mandal in the erstwhile Warangal District. The schedule also describes the boundaries. The averments of the plaint would disclose that the plaintiff claims that suit schedule land is ancestral property and is the absolute owner and in possession. After the death of his father, his name was mutated in pattedar column. While so, it is alleged in the plaint, the defendants hatched a crooked plan to grab the suit schedule property and on 01.07.2014 removed the boundary stones which were existing in the suit schedule property, but the same was resisted. The defendants challenged the plaintiff that they would sell the suit schedule land by dispossessing him. It is averred that

defendants are strangers to the suit schedule property and they should be restrained from interfering with the peaceful possession and enjoyment of the suit schedule property.

5.1. Trial in both the suits completed and the cases are coming up for arguments. At this stage, as noted above, two interlocutory applications in each of the two suits are filed.

5.2. In O.S.No.14 of 2012, in support of the prayer to re-open the suit and to appoint Advocate-Commissioner for identification of the land in four survey numbers mentioned in the prayer in I.A.No.373 of 2016, it is averred that several documents were filed by the defendants at the time of their evidence and depositions were made claiming the land to an extent of Ac.1.27 guntas as belonging to them in Sy.Nos.145/3/A, 146/1/A, 149/1/1 and 149/1. However, the claim of ownership of those lands is without specifying the boundaries. By claiming that they have purchased the land, these persons are trying to grab the land and also circulating wrong information to the public at large to sell the land. The land belonging to the plaintiff is facing R&B road on Southern side from Mahabubabad to Jamandlapally, whereas the land in Sy.No.146 is part of Vagu with one culvert and there is no possibility to sell the property for house plots and land in Sy.No.149 is 500 feet away from R&B road, whereas they are trying to grab the land of plaintiff to show as if their land is abutting the R&B road and, therefore, survey is necessary for identification of all four survey numbers through the Advocate-Commissioner with the assistance of Assistant Director of Survey and Land Records, Mahabubabad.

5.3. In O.S.No.47 of 2014, in support of the prayer to re-open the suit and to appoint Advocate-Commissioner for identification of the land in four survey numbers mentioned in the prayer in I.A.No.375 of 2016, it is averred that several documents were filed by the defendants at the time of their evidence and depositions were made claiming the land to an extent of Ac.1.27 guntas as belonging to them in Sy.Nos.145/3/A, 146/1/A, 149/1/1 and 149/1. However, the claim of ownership of those lands is without specifying the boundaries. By claiming that they have purchased the land, these persons are trying to grab the land of plaintiff and also circulating wrong information to the public at large to sell the land. The land belonging to the plaintiff is facing R&B road on Southern side from Mahabubabad to Jamandlapally. The pleadings in these IAs are identical to the pleadings in IA Nos.372 and 373 of 2016 in O.S.No.14 of 2012.

6. The defendants filed almost identical counter-affidavits in respective IAs in both suits, denying the contentions of the plaintiffs. According to the defendants, plaintiffs are not the owners and are not in possession of the respective suit schedule lands; a false deed of transfer was registered by persons, who are no way concerned to the property; a false claim of ownership is made respectively. No land is standing in the name of three persons from whom plaintiff in O.S.No.14 of 2012 claimed to have purchased the land and, therefore, it was a false sale transaction to grab the property. The description of the property in the schedule is only made with an intention to grab the property. According to the defendants, they purchased the land to an extent

of Ac.0.06 guntas in Sy.No.145/3/A; Ac.0.21 guntas in Sy.No.146/1/A; and Ac.0.20 guntas in Sy.No.149/1/1 of the same village, that one Sayyad Usman and the defendants are owners and in possession of land to an extent of Ac.1.00 guntas in Sy.Nos.145, 146 and 149. It was contended that trial was already completed and case is coming up for arguments and at this stage, to drag on the case, these petitions are filed. It is also contended that these petitions are filed only to gather evidence. It is further averred that in the suits for mere injunction, plaintiffs have to establish their possession by their evidence, but cannot rely on weakness in the defense of defendants. The endeavor of plaintiffs is to grab the land.

7. Taking note of the contentions urged by the rival parties and placing reliance on two decisions of this Court, IAs filed by the plaintiffs were allowed. The Assistant Director, Survey and Land Records, Mahabubabad was directed to visit the suit schedule properties, measure the lands, note down the physical features, draw sketch maps and to submit his reports in the respective suits. Challenging the said decisions, these revisions are filed.

8.1. Learned counsel for petitioners contended that earlier plaintiffs applied to Tahsildar for mutation of subject lands in their favour and to cancel the pass books issued to the defendants. As Tahsildar did not accede to their request, they preferred appeal to the Revenue Divisional Officer. On elaborate consideration of the matter, the Revenue Divisional Officer held that plaintiffs have not proved the possession and dismissed the appeal affirming the decision of Tahsildar in issuing pass books in favour of the

defendants. This decision has become final and in terms of the said decision, it is clear that plaintiffs are not in possession of suit schedule lands.

8.2. He further contended that the vendors of the plaintiff in O.S.No.14 of 2012 have no valid title and, therefore, question of plaintiff acquiring title does not arise. As plaintiff does not have *prima facie* title and not in possession, question of granting declaration in her favour does not arise. According to the plaintiff, her land is in Sy.No.145/1. Alleging that defendants are trying to interfere with the possession of the said land, suit was instituted. Therefore, plaintiff has no manner of right to seek survey of land in other survey numbers, which are totally un-connected with the land claimed by the plaintiff. He further contended that identifying the property in a suit for injunction does not arise and what is sought in the interlocutory applications amounts to collection of evidence and would cause great prejudice to the defendants.

8.3. By referring to paragraph-11 of the written statement filed in the suit, learned counsel contended that the averments would disclose that one Pendra Ramchander got executed the sale deed in favour of defendants by a registered document, by specifying the boundaries of the land and how property was acquired to a total extent of Ac.1.27 gunats of land and this statement was not controverted. He further contended that the land is already converted into house sites, made house plots, sold large extent of land to third parties and that the plaintiff is never in possession of the suit schedule property.

8.4. No evidence is lead to show that plaintiff in O.S.No.47 of 2014 succeeded to ancestral property. His father did not own any land in Sy.No.150/2 and, therefore, plaintiff succeeding to it would not arise.

8.5. In support of his contention that trial Court erred in allowing the IAs, re-opening the case and appointing the Commissioner, he placed reliance on the following decisions:

i) **Koduru Sesa Reddy v. Gottigundala Venkata Rami Reddy and others**¹;

ii) **Batchu Narayana Rao v. Batchu Venkata Narasimha Rao**²;

iii) **Velaga Narayana and others v. Bommakanti Srinivas and others**³; and

iv) **Jammi Venkata Krishna Rao and others v. Jammi Venkata Hanuma Ravindranath**⁴.

8.6. He also contended that two decisions relied by the plaintiffs and referred to by the trial Court have no application to the facts of the case.

9.1. Per contra, Sri B.Vijaysen Reddy, contended that by two documents mentioned in paragraphs - 5 & 6 of I.A.No.373 of 2013, defendants sought to contend that they are in possession of land to an extent of Ac.1.27 guntas in Sy.Nos.145/3/A, 136/1/A and 149/1/1, whereas this land is the same land, which is in occupation and possession by the plaintiff in O.S.No.14 of 2012.

¹ 2006 (1) ALD 372

² 2010 (5) ALD 83

³ 2014 (4) ALT 152

⁴ 2015 (5) ALT 14

9.2. According to learned counsel prayer to conduct survey is necessary as defendants introduced certain documents as evidence in proof of their contention that Ac.1.27 guntas of extent of land was purchased by them in Sy.Nos.149,1 149/1/1, 146/1/A and 145/3/A, whereas those documents do not specify the boundaries.

9.3. He would contend that with an objective of grabbing their land fictitious transactions were created.

9.4. He would submit that as there is no proper description of the boundaries, for better appreciation of plaintiff's claim vis-à-vis the defendants' contention, plaintiff seeks reopening of the suit and for appointment of Advocate-Commissioner for the purpose of identifying the boundaries of suit schedule lands vis-à-vis the lands claimed by the defendants. Learned counsel contended that in the interest of justice and for proper adjudication, it is necessary for localizing the properties in dispute.

9.5. In support of his contention, he placed reliance on the decision of **Jammi Venkata Krishna Rao and others v. Jammi Venkata Hanuma Ravindranath** [2015 (5) ALT 14].

10. Before analyzing the respective contentions, it is appropriate to notice, at this stage, that the total extent of land in Sy.Nos.145,145/1, 146, 146/1/A, 149,149/1, 150 and 150/2 is not stated. It is also not stated as to whether there are any the owners of the lands and presently in possession. It is also not in dispute that the land claimed as owned by the plaintiff in O.S.No.14 of 2012 is in Sy.No.145/1 and in O.S.No.47 of 2014 is in Sy.No.150/2 and the land claimed by the defendants is in

different survey numbers. While plaintiffs claim that properties described in the respective schedules is in their possession, defendants not only dispute the factum of possession, but also dispute passing of title to the plaintiffs, as according to them, the vendors of plaintiff in O.S.No14 of 2012 did not have title and that even father of plaintiff in O.S.No.47 of 2014 did not own land in Sy.No.150/2 and, therefore, title could not have passed on to the plaintiff.

11. The question for consideration is whether the facts of these cases warrant reopening of the suit and to appoint Commissioner for conducting survey and identifying the boundaries of the four survey numbers mentioned in the order in these revision petitions?

12.1. In **Koduru Sessa Reddy** (supra), pursuant to orders in I.A., filed under Order XXVI Rule 9 of Civil Procedure Code, 1908 (CPC), Advocate-Commissioner filed his report noting down the physical features. Later, defendants filed IA for appointment of another Advocate-Commissioner. They pleaded that earlier Advocate-Commissioner was appointed without notice to them and plaintiff mislead the Commissioner at the time of noting down the physical features. Trial Court allowed the I.A. Plaintiff challenged the same in the CRP. The objection raised was, second IA for appointment of second Commissioner is not valid unless the first Commissioner report was set aside by assigning due reasons in support of the decision.

12.2. While allowing the CRP, learned single Judge of this Court observed as under:

“8. It hardly needs any emphasis that in a suit for perpetual injunction, it is for the plaintiff to prove that he is in possession of the suit schedule property, as on the date of filing of the suit. The necessity to appoint Commissioner would arise, if only, the evidence, which is already on record, leaves something to be explained further and the Court feels that the best way to go nearer the truth of the matter is by appointing a Commissioner.

(9) xxxxx

10. Even in such cases, particularly, in suits for perpetual injunction, appointment of a Commissioner to note down the physical features cannot precede the recording of evidence. The parties have to adduce their evidence in support of their respective contentions as to possession.

The Court would be justified to appoint Commissioner, only if it feels that the evidence on record is not sufficient to record a finding, for the purpose of granting or refusing the relief of injunction. In the instant case, the trial is yet to commence.”

(emphasis supplied)

12.3. In **Batchu Narayana Rao** (supra), suit was instituted praying to grant relief of declaration of title and recovery of possession. Six years after institution of the suit, plaintiff filed IA under Order XXVI Rule 9 of CPC with a prayer to appoint a Commissioner to identify the suit schedule property; to fix the boundaries thereof; to measure the land in his possession and to measure the remaining land in possession of another person. The said application was ordered by the trial Court. Pursuant thereof, Commissioner conducted survey without proper notice. Petitioner filed IA with a prayer to appoint another Advocate-Commissioner. The said IA was dismissed. Petitioner filed another IA in the year 2008 with a similar prayer and the same was also dismissed by referring to the earlier IA, opposing the prayer for grant of

appointment of second Commissioner. In this case also, same plea was raised, that unless the first commissioner report was set aside, there cannot be a direction to appoint the second Commissioner. This Court observed that Commissioner cannot be appointed to gather evidence for and on behalf of any party. It is for the party concerned, to establish its case and the feasibility of appointing a Commissioner will be considered, if the Court feels that inspection and further enquiry is necessary, having regard to the uncertainty, that came into existence, after the trial has progressed to certain extent (paragraph 7). The Court further observed that, it needs to be noted that the report on those aspects which would become part of the record would have its own impact on the rights of other parties and in relation to the property which is not the subject matter of the suit (paragraph 8).

12.4. 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.

12.5. This Court held as under:

“13. Under Rule of Order 26 in any suit in which the Court deems a local investigation is necessary or proper for the purpose of elucidating any matter in dispute, it can issue a commission. Though issuing commission is discretionary, the Court has to exercise discretion in an appropriate and judicious manner. The purpose and object of local investigation under Rule 9 is to have the evidence from the spot itself to have a correct and proper understanding of the dispute between the parties. The local investigation report submitted by the commissioner enables the Court to make a correct assessment of evidence on record. When the Court is of the opinion that the material on record requires elucidation, it would be just and reasonable to issue a commission for the said purpose. A commission at the instance of one of the parties to find out as to who is in possession of the property cannot be issued as it enables the party seeking appointment of commissioner to collect or gather evidence. But, where there exists a dispute regarding suit property, the Court has to necessarily issue a commission with the assistance of a surveyor, otherwise, it would be highly difficult for the Court to completely and effectively resolve the dispute and issuing such commission would not amount to collection of evidence. Commission for the said purpose can be issued prior to or after the parties let in their evidence.”

13. 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.

14. The prayer in both the suits is bare injunction to restrain the defendants from interfering in their peaceful possession and enjoyment of the suit schedule properties. Whenever a bare injunction is sought the burden lies on the plaintiffs to first establish that they have prima facie title to the property and they are in possession of the suit schedule properties and illegally they are sought to be dispossessed. In a suit for bare injunction, plaintiff cannot rely on weakness in the defense of defendants. In the pleadings in the suits filed by them respectively, the plaintiffs have alleged that defendants claimed to have purchased various extents of land in different survey numbers. On a bare perusal of the pleadings of the respective parties, it appears that there is no boundary dispute and extent of land respectively claimed. However, defendants dispute the ownership of plaintiffs by referring to the history of the transactions in the suit schedule properties.

15. It is also relevant to note that the facts on record do not disclose the actual extent of land in the survey numbers where survey was directed to be conducted and how the dispute has arisen with reference to the rival claim vis-à-vis the extent of land claimed to have been owned respectively by the plaintiffs and defendants and whether there are any other owners in these survey numbers. It is further to be noted that in the written

statement filed by defendants, they categorically mentioned about the acquisition of properties by them and the survey numbers in which their lands are situated. Thus, plaintiffs were aware of the stand of the defendants even before the trial commenced. Thus, even assuming that the claim of plaintiffs to localize the property is valid, plaintiffs ought to have taken the plea for appointment of Commissioner at that stage and ought not to have waited till completion of trial and when the matters are listed for arguments. Though there is no bar in seeking appointment of Commissioner even after trial is concluded, but in assessing the requirement of a Commissioner report Court has to see the conduct of party seeking such a relief.

16. 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.

17. In the cases on hand, in substance, it appears plaintiffs claim that the extent of land stated to have been purchased by defendants without proper boundaries in the relevant documents

marked on their behalf are not correct. Whereas, this is not the prayer and those properties are not the subject matter of these suits. Prayer sought in these suits is to grant bare injunction against interference in the lands claimed to be in possession by plaintiffs in respective survey numbers. There is not even a whisper of defendants altering the physical features of suit schedule properties.

18. Having regard to facts of these cases, the trial Court erred in allowing the I.As filed by the plaintiffs in both suits. The orders of Principal Junior Civil Judge, Mahabubabad, in I.A.Nos.372 and 373 of 2016 in O.S.No.14 of 2012 and I.A.Nos.374 and 375 of 2016 in O.S.No.47 of 2014, dated 25.01.2017 are set aside and C.R.P.Nos.971, 982, 1123 and 1131 are allowed. However, it is made clear that there is no expression of opinion on respective contentions in the pending suits. The observations made herein above are for considering these Civil Revision Petitions only. Parties are at liberty to raise all contentions as available in law in the pending suits.

Miscellaneous petitions if any pending in these revision petitions shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 17.08.2017
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HON'BLE SRI JUSTICE P.NAVEEN RAO



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