

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.332 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the petitioner/unsuccessful plaintiff is directed against the order, dated 16.12.2016, of the learned Junior Civil Judge, Tadipatri, passed in I.A.No.846 of 2016 in O.S.No.147 of 2013.

2. I have heard the submissions of the learned counsel for the petitioner/plaintiff. Though the sole respondent/defendant is served with notice, he did not enter appearance. I have perused material record.

3. By the order impugned in this revision, the trial Court dismissed the petition filed by the petitioner for re-entrustment of the Commissioner warrant to the same Commissioner for the purpose of resurvey of the suit schedule property and fixing the measurements of the plaintiff's site and encroachment complained of in the suit.

4. The facts, which are necessary for consideration and the submissions made on behalf of the petitioner/plaintiff, in brief, are as follows:

The plaintiff brought the suit complaining encroachment of the plaintiff's site by the defendant and for mandatory injunction. A rough plan is also filed along with the plaint. According to the plaintiff, the vendor of the plaintiff and the vendor of the vendor of the defendant is one common vendor by name D.Vasudevaiah. The plaintiff purchased the plaint schedule property under a registered sale deed dated 03.06.1987, wherein the boundaries as well as the measurements of the

plaintiff's property are mentioned. The plaintiff's site is marked as ABCD in the plaint plan. Radhamma, the vendor of the defendant purchased vacant site of 70 square yards in Sy.No.681/D from the said Vasudevaiah through his GPA Holder under registered sale deed, dated 17.07.1991. In her sale deed, the boundaries and the measurements of the said property are mentioned. Further, in the sale deed of the defendant, dated 29.04.2002, which was executed by the defendant's vendor, the measurements are shown in excess. The defendant's site is shown as 'EFGH' in the plaint plan. The defendant's vendor could not have conveyed a better title than what he/she actually possessed. Therefore, the defendant's title deed insofar as the excess measurements and excess extents is not valid. While so, when the plaintiff is away from the village, the defendant encroached in the rasta (way), which was left on the Western side by the vendor of the plaintiff while constructing a compound wall and making constructions. The defendant encroached upon not only the rasta of four feet width but also the site of the plaintiff and opened a door way on the Eastern side and constructed a stair case and a compound wall high-handedly and the encroached portion is also shown in red colour and as 'AA1, DD1' in the plaint plan. The said rasta (way) was left by the plaintiff's vendor for usage of the plaintiff and of owners of the plots situate towards North. Therefore, the suit is filed for removal of the said compound wall and the constructions made high-handedly by the defendant. Prior to the suit, a notice was also issued to the defendant. In the suit, a Commissioner was also appointed, at the request of the plaintiff, and he visited the properties and measured the same and filed a report. The Commissioner was appointed to note down the physical features and fix the encroachments made by the defendant with the help of a Mandal Surveyor and file a report. A work memo with relevant points was also

served upon the learned Advocate Commissioner. Further, in the Commissioner's report, the Commissioner categorically stated that he measured the vacant site of the plaintiff from East to West on the Southern side and also from East to West on Northern side and that he asked the Surveyor as to what is the actual width of the Putlur Road on Eastern side and that the Surveyor could not say the actual width of the Putlur Road and also as to what extent of the plaintiff's site was encroached for Putlur Road, as he did not bring the relevant registers. The Commissioner also measured the house of the defendant and the compound on Eastern side of the defendant's house. The Commissioner also asked the Surveyor to ascertain the actual width of the Putlur Road on the Eastern side of the plaintiff's vacant site before the road was widened, but, it appears that the Surveyor has stated that he does not know the details as he did not bring the relevant records. The Commissioner noted in his report that he cannot say the extent of encroachment but he mentioned in his report that he observed the doorway and compound wall towards the Eastern side of the defendant's house, but, noted that there is no four feet rasta (way) towards the West of the plaintiff's site. Therefore, from what has been stated in the Commissioner's report it is clear that the Commissioner did not completely take the measurements of the properties of the parties and of the adjacent properties and failed to fix the encroachment complained of by the plaintiff. Aggrieved thereof, the petitioner/plaintiff filed a petition to re-entrust the warrant to the same Commissioner to measure all the adjacent properties including the road and the rasta (way), which was encroached upon by the defendant as per the case of the plaintiff and file a further report so that the matter can be effectively adjudicated by the trial Court. However, the said petition was dismissed by the trial Court. Hence, the plaintiff is before this Court.

5. The learned counsel for the plaintiff while bringing the above facts to the notice of the Court, further submitted as follows: 'The plaintiff issued a work memo to the Commissioner. The points in the work memo are not completely answered by the Commissioner. The Commissioner filed the report without doing the work entrusted to him by the Court. Therefore, it is necessary to re-entrust the warrant to the Commissioner. Otherwise, it is not possible to know the extent of encroachment made, if any, by the defendant. Unless the encroachment complained of is determined by localising the same after measuring the properties of the parties and the adjacent properties, it is not possible to come to a just conclusion on the issues settled for determination in the suit. If the warrant is not re-entrusted and in the event of ultimate success of the plaintiff in the suit, eventually without any clarity about the encroachment, if any, and its extent, it would be difficult to execute the decree. If the suit is to be disposed of without fixing the encroachments complained of, the plaintiff suffers serious loss. It is in the interest of both the parties and justice to re-entrust the warrant to the Commissioner.'

6. I have bestowed my attention to the facts and the chronology of events which are extracted supra. On an overall consideration of the facts and submissions, this Court is satisfied that there is acceptable merit in the case of the plaintiff/revision petitioner. Though the Commissioner was appointed to fix the encroachment complained of and delineated in the plaint rough plan, the Commissioner filed a report without completing the work entrusted to him by the trial Court, and thus he failed to determine the encroachment, if any, made by the defendant. In a suit complaining encroachment of rasta (way) and the plaintiff's site by the defendant and seeking reliefs of recovery of the

encroached portion of the plaintiff's site and mandatory injunction for removal of constructions in the encroached portion, it is necessary to measure and localize the properties of the parties and also the adjacent properties, if necessary, and fix the encroachment complained of, if any, for effective adjudication of the *lis* and giving a quietus to the dispute once and for all. In that view of the matter, this Court is of the considered view that the order impugned in this revision is not justified and, therefore, brooks interference.

7. In the result, the Civil Revision Petition is allowed and the order, dated 16.12.2016, of the learned Junior Civil Judge, Tadipatri, passed in I.A.No.846 of 2016 in O.S.No.147 of 2013 is set aside and the trial Court is directed to re-entrust the warrant to the same learned Advocate Commissioner for the purpose desired by the petitioner/plaintiff in the subject application. However, considering the fact that the suit is a sufficiently old suit, the trial court while re-entrusting the warrant to the said Commissioner shall give appropriate directions to complete the work as per the re-entrusted warrant with the help of the Mandal Surveyor concerned, as expeditiously as possible and file a report with a plan after answering the points in the Work Memoranda already served upon the Commissioner.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M.SEETHARAMA MURTI

August 7, 2017
Lmv