

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.4044 OF 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India challenging the order dated 02.6.2016 passed in I.A. No.91 of 2016 in O.S. No.20 of 2013 on the file of the Court of Junior Civil Judge, Chevella, Ranga Reddy District.

2. The facts leading to filing of the present civil revision petition are as follows: The respondents herein filed O.S. No.20 of 2013 seeking perpetual injunction against the petitioners herein. Along with the suit, the respondents filed I.A. No.112 of 2013 under Order XXXIX Rules 1 and 2 of CPC seeking temporary injunction against the petitioners and the same was allowed. The respondents also filed I.A. No.69 of 2013 under Order XXXIX Rule 2A of CPC alleging that the petitioners have violated the interim order passed in I.A. No.112 of 2013, which is pending before the trial court. The respondents also filed I.A. No.91 of 2016 under Order XXVI Rules 9 and 10 of CPC seeking appointment of advocate commissioner to demarcate and fix the boundaries of suit land as per documents in the suit. The trial court, after affording reasonable opportunity to both parties, allowed I.A. No.91 of 2016 appointing advocate commissioner to measure the suit schedule land and fix boundaries with the help of Mandal surveyor. Aggrieved by the same, the petitioners filed the present revision petition.

3. The contention of learned counsel for the petitioners-defendants is three fold: (1) the trial court ought not to have

appointed the advocate commissioner for the purpose of collection of evidence, which is not permissible under law, (2) the trial court failed to consider that the burden of proof lies on the respondents-plaintiffs to establish that they were in possession of the suit schedule property as on the date of filing of the suit; and (3) the order passed by the trial court is not sustainable either on facts or in law. ***Per contra***, learned counsel for the respondents-plaintiffs submitted that when there is boundary dispute between the parties, it is just and necessary to appoint an advocate commissioner in order to effectively adjudicate the *lis* involved in the suit. He further submitted that the trial court rightly considered various aspects and allowed the I.A. He also submitted that there is no illegality or irregularity in the order passed by the trial court, which warrants interference of this court.

4. Now the point that arises for consideration is, “*whether the trial court is not justified in appointing the advocate commissioner?*”.

Point:

5. The respondents have filed the suit for perpetual injunction restraining the petitioners from interfering with peaceful possession and enjoyment of land admeasuring an extent of Acs.10.20 guntas in survey Nos.212, 213 and 214 situated at Aloor Village of Chevella Mandal in Ranga Reddy District. A perusal of the record reveals that out of the total extent of Acs.10.20 guntas, an extent of Acs.2.30 guntas is situated in survey No.213. The trial court granted interim injunction in favour of the respondents against the petitioners in respect of the suit schedule property.

6. It is the case of the respondents that the petitioners have violated the interim injunction order passed by the trial court in I.A. No.112 of 2013 in favour of the respondents and fixed the Khadies in the suit land. It is the case of the petitioners that the respondents have been in possession of an extent of Acs.2.07 guntas of land in survey No.213 but they filed the suit alleging that they have been in possession of an extent of Acs.2.30 guntas of land in survey No.213. A perusal of the affidavit and counter *prima facie* reveal that the dispute between the parties is with regard to an extent of Ac.0.23 guntas of land in survey No.213 of Aloor Village, Medchal Mandal, Ranga Reddy District. It is not in dispute that the petitioners and respondents are adjacent lands' owners. The record further reveals that there is boundary dispute between the parties. In order to appreciate the rival contentions, it is not out of place to extract hereunder relevant portion in paragraph No.6 of the written statement.

"... .. That it is submitted that recently the plaintiffs are demanding the defendants to get the survey of the lands since they are having less land at the spot. That in furtherance of their mala fide intention they filed this suit and obtained the interim injunction order and under the garb of the said order they are trying to encroach into the land of these defendants. That it is submitted that even if these defendants are in excess possession of the land they are perfected their title by way of adverse possession since they are in possession of the same for more than 60 years."

7. The plea taken by the petitioners clearly demonstrates that the respondents requested the petitioners to cooperate with them for measuring the land, even prior to the filing of the suit. The petitioners-defendants have taken a specific plea that even if they are in excess possession of the land they acquired title by adverse possession. The petitioners are not denying the title of the

respondents in respect of the suit schedule property situated in survey Nos.212 and 214. A perusal of the record reveals that there is a dispute between the parties with regard to Acs.0.27 guntas of land in survey No.213. Even if both the parties adduce oral and documentary evidence, it may not be possible for the trial court to determine whether the respondents were in possession of an extent of Acs.2.30 guntas in survey No.213 as on the date of filing of the suit or not. In order to adjudicate the *lis*, it is just and necessary to appoint advocate commissioner for local inspection and filing of report.

8. In support of the argument, learned counsel for the respondents relied upon the judgment of this court in **Jajula Koteswar Rao v Ravulapalli Masthan Rao**¹, wherein this court held at Paragraph Nos.18, 19 and 20 as follows:

18. The object of the local investigation under Order XXVI Rule 9 CPC is to collect evidence at the instance of the party who relies on the same and which evidence cannot be taken in Court but can be taken only from the peculiar nature, on the spot. The Commissioner in effect is a projection of the Court appointed for a particular purpose. The law of evidence enjoins upon a party to prove the fact which he relies on and in that sense, an obligation is cast upon the party; and if he fails to discharge that obligation, adverse consequence will follow and he will have to face the repercussions of the same. This right of the party to adduce evidence gets adjudicated in the interlocutory proceedings under Order XXVI Rule 9 CPC.

19. Therefore, I also reject the contention of the petitioner that appointment of an Advocate-Commissioner in the facts and circumstances of the case, amounts to collection of evidence.

20. In fact in *Haryana Waqf Board v. Shanti Sarup and others*, (2008) 8 SCC 671, the Supreme Court has also held that in a case where demarcation of the disputed land is warranted, it would be appropriate for the Court to direct investigation by appointing a local investigator under Order XXVI Rule 9 CPC.

¹ 2015 (6) ALD 483

9. Having regard to the facts and circumstances of the case and also the principle enunciated in the case relied upon by the respondents, I am of the considered view that it is a fit case for appointment of advocate commissioner. The trial court considered the material available on record in right perspective and appointed the advocate commissioner. I am agreeing with the findings arrived at by the trial court. There is no illegality or irregularity in the order passed by the trial court. There are no reasons much less cogent and valid reasons to interfere with the findings of the trial Court.

10. In the result, the civil revision petition is dismissed. Miscellaneous petitions, if any pending in this revision petition shall stand closed.

Date: .3.2017
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T.SUNIL CHOWDARY, J.

