

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No.5234 OF 2017

Dated:05.12.2017

Between:

Dr. P. Nagalingam, S/o. Bhushanam,
Aged Major, Occ: Business,
R/o.C/o. Nagalingam Nursing Home,
Huzurabad Post and Mandal,
Karimnagar District

.. Petitioner

And

Mohd. Akheel Pasha, S/o. Afzal Miya,
Aged 44 years, Occ: Legal practitioner,
R/o.H.No.2-42, Edulapusapally
Village, Mahabubabad Mandal,
Warangal District and others

.. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**CIVIL REVISION PETITION No.5234 OF 2017****ORDER:**

Petitioner is defendant in O.S.No.1191 of 2015. This revision is preferred aggrieved by the docket order of Court below dated 22.09.2017 in I.A.No.1532 of 2015, on which date I.A. was heard and posted for orders on 09.10.2017.

2. Briefly noted, the facts are as under:

Petitioner instituted O.S.No.1121 of 2015 praying to grant perpetual injunction against the respondents/plaintiffs. In the said suit, the 1st respondent herein was the defendant. Petitioner sought for perpetual injunction against interference of the land to an extent of 400 sq. yards in Survey No.304 of Lashkar Singaram Village in Hanamkonda Mandal. Petitioner filed I.A.No.1443 of 2015 praying to grant temporary injunction. By order dated 12.11.2015, the Court below granted injunction in favour of the petitioner. The respondents herein instituted O.S.No.1191 of 2015, wherein the petitioner herein is the sole defendant, praying to grant perpetual injunction against interference in the land to an extent of 700 sq. yards in Survey No.294 of Lashkar Singaram Village, Hanamkonda Mandal. Respondents also filed I.A.No.1532 of 2015 praying to grant temporary injunction against interference by the defendant on the suit schedule property. Petitioner herein filed I.A.No.82 of 2016 in O.S.No.1191 of 2015 praying to appoint advocate commissioner to demarcate the land in Survey Nos.294 and 304 of Lashkar Singaram Village, Hanamkonda Mandal. On due consideration of

the matter, the Court below by order dated 23.02.2016, accepted the plea for appointment of advocate commissioner; appointed Sri M. Sunil Kumar, advocate, as advocate commissioner to demarcate the land in Survey Nos.294 and 304 of Lashkar Singaram Village, Hanamkonda Mandal; locate the respective properties with the help of Assistant Director of Survey and Land Records, Warangal. Pursuant to thereof, according to learned counsel for the petitioner, the advocate commissioner sought the assistance of Assistant Director of Survey and Land Records, Warangal. According to learned counsel, though on 23.02.2016, advocate commissioner was appointed and direction was issued to demarcate and locate the properties mentioned in I.A.No.82 of 2016, so far the advocate commissioner has not filed his report and the petition was adjourned from time to time to enable the advocate commissioner to file his report. However, in the meantime, the trial Court has heard I.A.No.1532 of 2015 and by order dated 22.09.2017 posted the matter to 09.10.2017 for passing orders.

3. According to learned counsel, in view of the rival claims in the respective suits and when there is a serious dispute to identify the properties in issue and having considered the necessity to appoint advocate commissioner to demarcate and localize the properties claimed by the respective parties in two suits pending before the Court below, the Court below could not have heard I.A.No.1532 of 2015 without first obtaining the report of the advocate commissioner. According to learned counsel, any decision made in I.A.No.1532 of 2015 before obtaining the report of the advocate commissioner would prejudice the interest of the

petitioner/defendant. According to him, having waited for consideration time, on 25.09.2017 memo was served on the advocate commissioner requesting him to submit his report expeditiously. But, so far the report is not filed. According to him, in view of the serious dispute on the respective extents of land and when an injunction order was granted in favour of the petitioner/defendant in O.S.No.1121 of 2015 filed by him, the Court below could not have proceeded independently to hear I.A.No.1532 of 2015.

4. Having regard to the order of the Court below dated 22.09.2017, this Court while ordering notice on respondents, by order dated 06.10.2017 stayed further proceedings. Initially I.A.No.82 of 2016 in O.S.No.1191 of 2015 was mentioned but the same was clarified by order dated 10.10.2017 stating that the stay of further proceedings is in I.A.No.1532 of 2015 in O.S.No.1191 of 2015. Notices are served and appearance is entered. When the matter was taken up for hearing on 08.11.2017, there was no representation for the respondents. Thus, while extending the interim order, the matter was directed to be listed on 24.11.2017. On 24.11.2017 also, there was no representation. On 30.11.2017, learned counsel for the petitioner was heard. Since there was no representation, the matter was adjourned to 04.12.2017 to enable the respondents to make their submissions. On 04.12.2017 also, there was no representation. However, on the request of learned counsel for the petitioner, the matter was adjourned to this date. Today also, there is no representation on behalf of the respondents. In view of the same, after hearing learned counsel for the petitioner, the revision is being disposed of by this order.

5. Having regard to the peculiar facts of this case, as noted above, and though the order appointing the advocate commissioner was on 23.02.2016 i.e., more than 20 months back and since no report is filed and having regard to the fact that there are rival claims and a serious dispute regarding location of the properties claimed respectively by the petitioner and respondents herein, the Court ought to have obtained advocate commissioner's report as directed in I.A.No.82 of 2016 before hearing I.A.No.1532 of 2015.

6. The Civil Revision Petition is accordingly disposed of requesting the Court below to obtain the report from the advocate commissioner as per the orders passed on 23.02.2016 in I.A.No.82 of 2016 and thereafter hear I.A.No.1532 of 2015 and pass appropriate orders as warranted in the facts of the case. Since advocate commissioner was appointed on 23.02.2016 and so far no report is filed, the Court below is also requested to direct the advocate commissioner to expedite inspection, location and demarcation of the suit schedule properties mentioned in the order by fixing a time frame. There shall be no order as to costs.

Miscellaneous Petitions, if any, filed in this Civil Revision Petition shall stand closed.

P. NAVEEN RAO, J

Date:05.12.2017

Note:- Furnish C.C. by 11.12.2017

(B/o)
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