

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No.4242 OF 2017

Dated:17.11.2017

Between:

Chatla @ Gummadi Gopamma,
W/o.Late Agaiah, aged 84 years,
Occ: Household, R/o.H.No.7-7-229,
Ujilibase, Hanamkonda,
Warangal and others

.. Petitioners

And

Mohammed Uber-ur-Rahman,
S/o. Khaja, aged 44 years,
Occ: Pvt. Employee, R/o.H.No.6-5-25,
Near Thousand Pillars Temple,
Hanamkonda, Warangal, rep., by his
GPA Holder, Mohd. Khaja, S/o. Ibrahim,
Aged 67 years, Occ: Retd. Employee,
R/o.H.No.6-5-25, Near Thousand
Pillars Temple, Hanamkonda,
Warangal and others

.. Respondents



The Court made the following:

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ORDER:

Heard Sri J. Prabhakar, learned counsel for the petitioners, and Sri P. Hari Prasad, learned counsel for the respondents.

2. Plaintiff filed O.S.No.357 of 2015 pending on the file of the Principal Junior Civil Judge, Warangal. In the said suit, defendants 2 and 3 filed I.A.No.33 of 2017 praying to appoint an advocate commissioner to inspect the suit land as shown in the schedule and plan annexed with the plaint; to note down the physical features of the same along with the boundaries and also to note down and prepare a plan of plot or plots if any found on the land after taking work memos from both sides.

3. On elaborate consideration of the rival claims, the trial Court allowed the petition and appointed Sri R. Suresh, advocate, as advocate commissioner to determine the actual location of the suit schedule property i.e., Survey Nos.38 or 39/B and 40/B and to measure the land in the said survey numbers to ascertain the actual location with the assistant of surveyor of land records and to note down the physical features of the suit schedule property.

4. According to learned counsel for the petitioners, the trial Court erred in ordering appointment of advocate commissioner to determine the actual location of the suit schedule property and to measure the land in the respective survey numbers. According to him, the trial Court is yet to commence trial and it is premature for it to call for such report. He further submits that even according to petitioners in I.A.No.33 of 2017, they only wanted to verify the

physical features of the property, as according to them, already some construction was made and it is not open land as claimed by them. Thus, if at all there is requirement of advocate commissioner for noting down the physical features, the same should have been confined only to physical verification of the property.

5. Learned counsel for the respondents points out that the relief granted by the trial Court is the same as sought for by the plaintiffs in their counter affidavit filed in support of the petition. Learned counsel has drawn the attention of this Court to paragraph No.8 of the counter affidavit filed on behalf of the 4th respondent, wherein it is stated that petitioners have themselves agreed for conducting of physical inspection and they have no objection for measurement of the lands in Survey No.38, 39/B and 40/B of Kakatiya Colony, Hanamkonda, Warangal District, to ascertain the actual location with the help of surveyor and therefore there is no error committed by the trial Court in passing the order under revision. Learned counsel further submits that in fact advocate commissioner has already conducted physical inspection of the property and has taken the measurements and at the stage of submission of his report, because of the interim orders passed by this Court, so far no report is filed.

6. Learned counsel for the respondents submits that trial Court committed some error in drafting the order and the same is clarified in the affidavit filed in support of C.R.P.MP.No.5581 of 2017 and submits that merely because of some confusion by the parties, the Court cannot pass an order in the nature in which the present order is passed even before commencement of trial.

7. The order under challenge is interlocutory order in the pending suit and as seen from the material on record, particularly in paragraph No.8 of the counter affidavit filed in I.A.No.33 of 2017, even the petitioners/plaintiffs have agreed for such course. Even otherwise, since the trial Court has exercised its discretion, on due consideration of the rival claims, no case is made out for interference by this Court, at this stage.

8. At this stage, it is submitted that as both the plaintiffs and defendants filed their respective sketch plans of the suit schedule property, the advocate commissioner should take into consideration before submitting his report.

9. Having regard to these submissions, the advocate commissioner is directed to consider the sketch plans submitted by the plaintiffs and defendants respectively, if the said sketch plans are not already considered, before submitting the report. If necessary, the advocate commissioner may conduct fresh physical inspection of the subject property after taking note of the respective sketch plans filed by the plaintiffs and defendants and submit his report accordingly.

10. The Civil Revision Petition is accordingly disposed of. There shall be no order as to costs.

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

P. NAVEEN RAO, J

Date:17.11.2017

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