

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No. 3178 of 2017

Date :21.7.2017

Between :

Dharavath Pandya S/o Keema
R/o Mondrai village of Kodakandla mandal
Warangal

Petitioner

And

Marri Venkataiah S/o Ramaiah
71 years R/o R/o Mondrai village of Kodakandla mandal
Warangal & others

Respondents

The Court made the following:



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ORAL ORDER:

Petitioner is defendant No.1. Suit was filed seeking perpetual injunction restraining the defendants, their workmen from interfering with the peaceful possession and enjoyment of the plaintiff. Petitioner herein filed I.A No. 191 of 2014 under Order 26 Rule 9 CPC to appoint Advocate Commissioner to note down the physical features of the suit schedule property with the help of the Mandal Surveyor. By the order under challenge, such application was dismissed.

2. Heard learned counsel for petitioner.

3. Plaintiff claimed that he is in possession of the suit schedule property and therefore sought for perpetual injunction against interference in peaceful possession and enjoyment of the suit schedule property. Defendants claimed that they purchased the suit schedule property through unregistered sale agreement. This contention of the defendants is opposed by the plaintiff by contending that property in issue is ancestral property. Petitioner herein seeks for measurement of the suit schedule property.

4. Bare perusal of the affidavit filed in support of the application would show that there is no averment why petitioner/defendants are seeking for appointment of Advocate Commissioner to note down the physical features. As noted above, the rival contentions are on the basis of ownership claim and neither the defendants nor the plaintiff are disputing the extent of land which is subject matter of the suit. In the affidavit filed in support of the application, what is alleged is even though plaintiff already sold the property to defendants and delivered vacant possession thereof, false claim is made without disclosing the true facts.

5. Learned counsel for petitioner placed reliance on the decision of this Court in *Bandi Samuel and another Vs Medida Nageswara Rao*¹. In the said decision, learned single Judge of this Court, exhaustively reviewed law on the subject. Learned counsel for petitioner has not pointed as to how said decision would come to the aid of the petitioner. In the said case also this Court noticed *‘that there is no material reflected in the petition, counter and order of the lower Court to show what are the measurements of the lane and by what document and what is the encroachment that is made to measure and demarcate’* (paragraph 21). Having regard to the facts of the case, this Court granted liberty to the petitioner therein to move fresh application and further directed to consider such application on its merits.

6. In the case on hand, having regard to the pleadings in the affidavit filed in support of the application, trial Court has come to the conclusion that what is sought by the petitioner/defendants would only amount to collection of evidence and dismissed the I.A. In the facts of this case, I do not see any error in the decision arrived at by the trial Court warranting interference. Accordingly, the revision petition is dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE: 21.07.2017
TVK

P NAVEEN RAO,J

¹ 2017 (1) ALT 493

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