

HONOURABLE SRI JUSTICE P.NAVEEN RAO
CIVIL REVISION PETITION NOS.1051 & 1087 of 2017

Date: 17.08.2017

CRP No.1051 of 2017:

Between:

Sunkari Padma W/o Sadanandam, Aged about 53 years,
Occu: Housewife, r/o. H.No.3-13-116, Kumarpalli Street,
Hanamkonda, Warangal and another.

.....Petitioners/petitioners/
Defendants

and

Mundrathi Raghupathi S/o Veeraiah, Aged about 51 years,
Occu: Busibness, R/o.Kumarpalli, Hanamkonda, Warangal,
presently R/o.H.No.3-12, Main Road, Bhupalpalli V & M,
Warangal District.

.....Respondent/respondent/
plaintiff



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NOS.1051 & 1087 OF 2017

COMMON ORDER:

Heard Sri P.Vishnuvardhan Reddy, learned counsel for petitioners and Sri Bathi Ram Mohan, learned counsel for respondents in both the revision petitions.

2. Plaintiff in O.S.No.884 of 2010 is husband of plaintiff in O.S.No.886 of 2010 and defendants in both suits are same. Since the issue in both civil revision petitions is same and parties and counsel representing parties are same, both civil revision petitions are heard together and disposed of by this common order. Parties are referred to as arrayed in the suits.

3. O.S.No.884 of 2010 on the file of II Additional Junior Civil Judge at Warangal was instituted by Mundrathi Raghupathi alleging that he is the owner and possessor of the house bearing No.3-13-117 of Kumarpalli village, Hanmakonda Mandal in Warangal district, with open space admeasuring 94.03 square yards (78.62 square meters) and defendants 1 and 2 sought to interfere in his property and dispossess him from the suit schedule property.

4. Smt. Mundrathi Vasantha instituted O.S.No.886 of 2010 on the file of II Additional Junior Civil Judge at Warangal alleging that she is the owner and possessor of house bearing Nos.3-13-118 and 3-13-119, total admeasuring 600.14 square yards (500.18 square meters), situated in Kumarpally locality of Hanmakonda Mandal in Warangal district and defendants are threatening to interfere with her possession and to dispossess her from suit schedule property.

5. On 26.11.2014 *ex parte* decree was made in both suits. In both suits, defendants filed Interlocutory Applications to set aside the *ex parte* decree (I.A.No.1855 of 2014 in O.S.No.884 of 2010 and I.A.No.1465 of 2015 in O.s.No.886 of 2010). This Court is informed that both IAs are pending.

6. While so, defendants filed I.A.No.354 of 2016 in O.S.No.884 of 2010 and I.A.No.321 of 2016 in O.S.No.886 of 2010 under Order XXVI Rule 9 read with Section 151 of Code of Civil Procedure (CPC) praying the Court to appoint Advocate-Commissioner to note down the physical features of suit schedule properties in both suits. By separate orders, dated 19.12.2016, both IAs were dismissed. Challenging the order in I.A.No.354 of 2016, CRP No.1051 of 2017 is filed and challenging the order in I.A.No.321 of 2016, CRP 1087 of 2017 is filed.

7. According to the plaintiffs, Mundrathi Raghupathi (Plaintiff in O.S.No.884 of 2010) is the owner and possessor of house bearing No.3-13-117 and Mundrathi Vasantha (plaintiff in O.S.No.886 of 2010) is the owner and in possession of house bearing Nos. 3-13-118 and 3-13-119. In other words, according to the plaintiffs, together they are the owners of house bearing Nos.3-13-117, 3-13-118, 3-13-119 in Kumarpalli locality, Hanmakonda town. The defendants filed the above IAs contending that after the *ex parte* decree and while IAs filed by them to set aside the *ex parte* decrees are pending, plaintiffs came to the subject properties with Tractors, JCB and other machines and demolished the houses and reduced the same into debris. Their objections were ignored and request to the Police to intervene was not acceded. With grate

persuasion they could resist further demolition. They, therefore, prayed to appoint Advocate Commissioner to note down the physical features of the properties described in the schedules of respective suits and file report. According to the defendants, physical features of the suit properties have to be persevered till final disposal of the suits.

8. The said prayer of the defendants was opposed by the plaintiffs. Plaintiffs contended that they are the owners of the properties on which they filed suits against defendants alleging that attempts were made to dispossess them from their properties and after the suits were decreed, they wanted to develop the properties and, therefore, steps were taken. According to the plaintiffs, the actions taken by them are perfectly legal and valid. It is further contended that in the suits for injunction, Commissioner cannot be permitted to note down the physical features of the suit schedule property as it would amount to collection of evidence. On detailed consideration of rival claims, trial Court noticed that appointment of Commissioner would arise in a suit for injunction only when identity of the property is in dispute; that there was no dispute on the identity of the property; and, therefore, the claim to appoint advocate commissioner was not valid. The trial Court was also of the opinion that no advocate commissioner can be appointed for preservation of evidence in a suit for injunction.

9. Sri Vishnuvardhan Reddy reiterated the contentions as urged before the trial Court. He would further contend that as the applications filed by the defendants for setting aside the

ex parte decrees are pending, if the physical features are altered it would cause great prejudice to the defendants. Therefore, in the interest of justice, it is necessary to undertake the assessment of the physical features and to place before the Court. According to the learned counsel, no prejudice would be caused to the plaintiffs if physical features are noted. On the contrary it would help in arriving at truth in the suits.

10. Learned counsel representing the plaintiffs submitted that since the suits were already decreed and since plaintiffs are in possession and enjoyment of the properties, they are entitled to deal with the property in their possession and enjoyment and noting down the physical features in an injunction suit and more so, after the suit is decreed is not permissible in law.

11. Both suits were instituted by the plaintiffs alleging illegal interference and attempt to dispossess them by the defendants and sought to grant decree for permanent injunction restraining the defendants from interfering with their possession and enjoyment of the properties. According to the plaintiffs, they are the owners of house bearing municipal Nos.3-13-117, 3-13-118 and 3-13-119 of Kumarpally locality, Hanmakonda Mandal in Warangal district. According to the defendants, they are the owners of four houses bearing house numbers 3-13-116, 3-13-117, 3-13-118 and 3-13-119 of Kumarpally locality and that the claim of the plaintiffs that they are the owners was illegal. Only issue for consideration in the suits was possession of suit properties by plaintiffs. The fact remains both suits were decreed granting permanent injunction

restraining the defendants from interfering with possession and enjoyment of plaintiffs' suit schedule properties.

12. The properties are identified with clear boundaries and municipal house numbers are assigned to them. In cases where there is a serious dispute regarding identity of the property or boundaries thereof, trial Court may be inclined to grant prayer to appoint commissioner, but as noted above there is no dispute regarding boundaries of the suit schedule properties. As noted by the trial Court, there was no dispute regarding the extent of properties and the boundaries of the properties. Having regard to these facts, I do not see any error in the decision arrived at by the trial Court in rejecting two applications filed by the defendants in two suits, against which these revision petitions are filed, warranting interference by this Court. Accordingly, both revision petitions are dismissed.

Miscellaneous petitions if any pending shall stand closed.
There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 17.08.2017
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