

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.5575 OF 2016

O R D E R

This civil revision petition under Article 227 of the Constitution arises out of the order dated 19.09.2016 passed by the learned II Additional Senior Civil Judge, Ranga Reddy District, in I.A.No.199 of 2016 in O.S.No.684 of 2013. The said I.A. was filed by the petitioners herein, the plaintiffs in the suit, under Order 26 Rule 9 CPC seeking appointment of an Advocate-Commissioner to survey the land with the help of the Assistant Director, Survey and Land Records, Ranga Reddy District. By the order under revision, the trial Court dismissed the I.A., but granted liberty to the petitioners/ plaintiffs to re-agitate their plea for appointment of an Advocate Commissioner by filing a necessary application after evidence was adduced on both sides and if it was found that the survey reports relied upon by the defendant society did not disclose demarcation of the disputed land. Aggrieved thereby, the plaintiffs in the suit are before this Court.

Heard Sri V.Jagapathi, learned counsel for the petitioners/ plaintiffs and Sri E.V.V.S.Ravi Kumar, learned counsel representing Smt.Udaya Sri, learned counsel for the respondent/defendant.

O.S.No.684 of 2013 was filed by the plaintiffs seeking a perpetual injunction restraining the defendant society from interfering with their peaceful possession and enjoyment over the suit schedule property. The suit schedule was divided into four schedules - A to D, being house properties situated in different extents of land, admeasuring in total, 1,044.48 square yards, situated in Survey Nos.354/1 and 355/1 of Maruthi Nagar, Malkajgiri Village and

Mandal, GHMC Malkajgiri Circle, Ranga Reddy District. The plaintiffs filed the subject I.A. in the suit asserting that the defendant society acquired land in Survey No.463 of Kapra Village, Keesara Mandal, Ranga Reddy District, but secured a layout from the Hyderabad Urban Development Authority, adding an extent admeasuring over four acres from the land in Survey Nos.354/1 and 355/1 of Malkajgiri Village. They further claimed that to thrash out this dispute as to identification of the lands of the parties, a survey of the land and demarcation of survey numbers would be required. They therefore sought appointment of an Advocate-Commissioner to undertake such a survey with the assistance of the Survey and Land Records authorities of the State.

In its counter, the defendant society stated that surveys were already conducted by the Office of the Assistant Director, Survey and Land Records, under File No.A3/248/2000 dated 03.03.2000, and thereafter, through the Vigilance and Enforcement Department of the State, under report dated 30.07.2012. The defendant society therefore asserted that there was no necessity for appointment of an Advocate-Commissioner to again undertake a survey, as sought by the plaintiffs.

The order under revision reflects that the trial Court took note of the assertion made by the defendant society that two surveys had already been made and opined that in the event, the said survey reports were found to be inadequate after evidence was adduced by both sides, it would be open to the plaintiffs to renew their request for appointment of an Advocate-Commissioner.

Though Sri V.Jagapathi, learned counsel, would call upon this Court to adjudicate upon the order under revision on facts and in

law, Sri E.V.V.S.Ravi Kumar, learned counsel, would point out that the I.A. filed by the plaintiffs warranted dismissal, in any event, as it was completely unclear therefrom as to what they had prayed for.

Perusal of the affidavit filed in support of the I.A. and the prayer in the I.A. bears out this contention of the learned counsel. The last paragraph of the affidavit filed in support of the I.A. reads as under:

‘It is therefore, prayed that this hon’ble court may be pleased to appoint ~~grant~~ advocate commissioner to survey the land with the assistance of the Asst Director Survey and Land Records, R.R.Dist, otherwise, we shall be put to irreparable loss and injury.’

Similarly, the prayer in the I.A. is equally vague and reads as under:

‘For the reasons stated in the accompanying affidavit, it is prayed that this hon’ble court may be pleased to appoint advocate commissioner to survey the land with the assistance of the Asst Director Survey and Land Records, R.R. Dist and pass such other or further orders as this hon’ble court deems fit and proper under the circumstances of the case.’

When the claim of the plaintiffs was that their land was in one set of survey numbers falling in Malkajgiri Village and Mandal and that the land of the defendant society falls in a different set of survey numbers falling in Kapra Village, Keesara Mandal, it was necessary for the plaintiffs to mention clearly as to which lands they want surveyed. Further, the growing practice of advancing vague and unclear pleas in I.A.s must be strongly discouraged. This Court is therefore of the opinion that in the light of the vague prayer in their I.A., the plaintiffs necessarily had to be denied relief.

That being said, the observation of the trial Court that only after the evidence was adduced by both sides in the suit, the plaintiffs should renew their request for appointment of an Advocate-Commissioner is not proper. Undertaking such an exercise after adducing of evidence is completed may mean that witnesses would have to be recalled for further examination on the findings recorded in such a survey. This would not only waste the time of the Court but also prolong the litigation. It would therefore be appropriate for the trial Court to examine whether such a plea warrants consideration before adducing of the evidence by both sides.

The plaintiffs are accordingly granted liberty to file an appropriate application, if they so choose, with a proper and detailed prayer and in the event they do so, the trial Court shall consider the same on its own merits and in accordance with law, without putting it off till completion of the trial.

Subject to the above observation, the civil revision petition is dismissed. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

3rd MARCH, 2017

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