

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.2325 of 2015

ORDER:

This is a revision, under Article 227 of the Constitution of India, by the unsuccessful plaintiff assailing the order, dated 29.04.2015, of the learned Junior Civil Judge, Narayanpet, passed in I.A.No.180 of 2014 in O.S.No.15 of 2014, filed by the petitioner/defendant under Order XXVI Rule 9 of the Code of Civil procedure, 1908, requesting to appoint an Advocate Commissioner to demarcate the suit land by metes and bounds.

I have heard the submissions of Sri M.Damodar Reddy, learned counsel for petitioner and of Sri D.Narsing Rao, learned counsel for respondent.

I have perused the material record.

The facts pleaded and submissions advanced before this Court, which are necessary to be stated as a prelude to this order, are as under: “The plaintiff/revision petitioner (hereinafter, ‘plaintiff’) brought the suit against the defendant for perpetual injunction in respect of Ac.16-10 guntas of land in survey number 118 of Oblapur village, Utkoor Mandal, Mahabubnagar District, more fully described in the schedule annexed to the plaint. In the plaint, it is *inter alia* alleged that the defendant has got nothing to do with the plaintiff’s land in survey number 118; the husband of defendant sold the entire land in survey number 119 to various purchasers; the purchasers from the husband of the defendant are in possession of the properties in survey number 119; towards North of the suit schedule land, the land in survey

number 119 is existing; and, it belongs to one Umesh son of Hanmanthu and one Kummari Nagappa; and their lands are parts of land in survey number 119; therefore, the defendant is unconcerned with the suit land; however, she is trying to get surveyed the entire land in survey number 119; and, in that process, she is coming to the suit land with some unsocial elements and is causing interference with the suit schedule land of the plaintiff. Per contra, the defendant filed a written statement *inter alia* contending that the material allegations in the plaint are false and that out of the land in survey number 119, her husband sold only portions of the land; and that the remaining Ac.2.38 guntas was in his possession; and that her husband died on 01.05.2009; and that since then, the plaintiff is creating boundary disputes with the defendant in respect of the land in survey number 119; and that the plaintiff is demanding the defendant to sell away her land taking advantage of her helplessness and as her son is not residing with her and is staying away.”

In this setting of facts, the defendant filed the aforestated interlocutory application for appointment of an Advocate Commissioner for resolving the boundary dispute before the suit of the plaintiff is decided on merits. The plaintiff filed a counter in that application of the defendant *inter alia* contending that the application is intended to grab the land of the plaintiff in survey number 118 in the process of getting surveyed the remaining extent of land of the defendant in survey number 119 and that the plaintiff has no knowledge as to where the lands of the defendant are situated and that there is no boundary dispute to be resolved by the Court and that if any boundary dispute is to be resolved, the defendant has to file a separate suit for

declaration or any other reliefs, if she so chooses, but she cannot seek appointment of Commissioner for demarcation of the boundaries in the present suit of the plaintiff for perpetual injunction.

Having regard to the facts and submissions and the issues involved in the suit, the trial Court, by the impugned orders, appointed an Advocate Commissioner by allowing the application filed by the defendant. Aggrieved there of, the plaintiff filed this revision.

The learned counsel for plaintiff, while reiterating the case of the plaintiff, would submit that along with the plaint, a sketch is filed and that to the North of the plaintiff's land, land of one Umesh son of Hanmanthu and land of Kummari Nagappa are situated; and that on the South of the plaintiff's land, the land of one Raghotham Rao is situated; and that the boundary recitals in the documents of Nagappa and Umesh would show that the defendant is not having any land adjacent to the land of the plaintiff; and that the land in possession of the plaintiff is her ancestral land; and that therefore, the trial Court was in error in appointing a Commissioner, more particularly, in the light of the fact that the adjacent land owners Umesh and Kummari Nagappa are not parties to the present *lis*; and that under the guise of the appointment of Commissioner in the suit, the defendant intends to have her land in survey number 119 demarcated, which is impermissible; and that, therefore, there is no necessity for appointment of a Commissioner in the plaintiff's suit for perpetual injunction in respect of the land in survey number 118, with which the defendant is admittedly not concerned.

The learned counsel for defendant, while reiterating the case of the defendant, which is stated supra and while supporting the orders of the Court below, submits as follows: “The plaintiff is claiming right in the land in survey number 118 and the defendant is claiming right in the land in survey number 119; in the suit, the plaintiff *inter alia* stated that the husband of defendant sold entire land in survey number 119, but the defendant is trying to get the land in survey number 119 surveyed and is thus interfering with the plaintiff’s property; the very allegations in the plaint show that the plaintiff is preventing survey being conducted in respect of the land in survey number 119 and is restraining the concerned from conducting survey though she has herself raised a boundary dispute; unless the boundary dispute, which the plaintiff has raised after the death of the husband of the defendant, is resolved, the suit cannot be effectively adjudicated and therefore, the order of the trial Court is justified.

I have given detailed and thoughtful consideration to the facts and submissions.

In the light of the very averments in the plaint that the defendant’s husband sold away his entire land in survey number 119 and that the defendant has nothing to do with the land of the plaintiff in Sy.No.118 and that she is trying to get the entire land in survey number 119 surveyed, and the further contention in the counter of the plaintiff that the plaintiff is not aware where the land of the defendant is situated coupled with the submissions of the defendant that there is a boundary dispute and that she is having a remaining extent of Ac.2-38 guntas in survey number 119, and in view of the further fact that the Court is empowered to appoint Advocate

Commissioner for elucidating the matters in dispute, this Court is satisfied that the order appointing a Commissioner for the purpose desired and for investigation as to whether there is a boundary dispute before the plaintiff's suit is adjudicated, is just and brooks no interference.

In the result, the revision petition is dismissed. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

M. SEETHARAMA MURTI, J

2nd January, 2017

ajr

