

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.182 of 2018

ORDER:

This Revision is filed assailing the order dt.08-12-2017 in I.A.No.122 of 2017 in O.S.No.140 of 2011 of the I Additional Junior Civil Judge, Madanapalle.

2. The petitioner herein is plaintiff in the suit.
3. He filed the suit for perpetual injunction restraining the respondent from interfering with his alleged peaceful possession and enjoyment of the plaint schedule property, which was described as plot No.41 in Sy.No.88, 89 and 91 of Basinikonda Revenue village.
4. The respondent took a plea in the written statement that his plot is plot No.42 and denied interfering with the possession and enjoyment of the petitioner over the subject property.
5. It is not in dispute that I.A.No.712 of 2011 had been filed by petitioner for appointment of Advocate-Commissioner to note down the physical features and existing construction in the petition schedule property and that the said Advocate-Commissioner had filed his report on 07-11-2012. The said report categorically refers to the dispute as to identity of the property raised by respondent and specifically states that there is no direction in the Commissioner's warrant to take the assistance of Surveyor and to identify the property and that the instruction of the Court is only to note down the physical features.

6. Subsequently, the respondent filed I.A.No.122 of 2017 stating that it is necessary to get the plots localized with the assistance of qualified Surveyor and such a direction was not there in I.A.No.712 of 2011.

7. Petitioner opposed the said application stating that the earlier report had already been filed by the said Advocate-Commissioner and unless the said report is scrapped, the second Advocate-Commissioner cannot be appointed.

8. By order dt.08-12-2017, I.A.No.112 of 2017 was allowed by the Court below. It held that since there is dispute about location of the properties claimed by petitioner and respondent, interest of justice requires entrustment of warrant to the same Advocate-Commissioner, who was earlier appointed to locate the property with the assistance of qualified Surveyor with reference to documents of both parties and that no prejudice would be caused to petitioner.

9. Assailing the same, this Civil Revision Petition is filed.

10. Though learned counsel for petitioner sought to contend that there is no necessity for re-entrustment of warrant, that too, to the same Advocate-Commissioner who had earlier filed report in I.A.No.712 of 2011, I am unable to agree with the said submission because in the order appointing Advocate-Commissioner passed in I.A.No.712 of 2011, there was no direction to the said Advocate-Commissioner to localize the properties of the petitioner and the respondent, and direction was only to note down the physical features

and nothing more. Therefore, there is no necessity for the said report to be scrapped first before granting relief of re-entrustment of warrant to the same Advocate-Commissioner.

11. Also, the Advocate-Commissioner, to whom the warrant is re-entrusted in I.A.No.112 of 2017 is the same person who was appointed in I.A.No.712 of 2011 at the instance of the petitioner. The petitioner never objected to the independence and integrity of the said Advocate-Commissioner at any point of time. So, he cannot object to the re-entrustment of warrant to the same Advocate-Commissioner by now casting aspersions on the said Advocate-Commissioner.

12. I therefore do not see any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

13. Accordingly, the Civil Revision Petition is dismissed at the admission stage. No costs.

14. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 20-04-2018

Vsv