

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.426 OF 2018

ORDER

O.S.No.43 of 2005 on the file of the learned II Additional District Judge, Ranga Reddy District at L.B.Nagar, was filed by Irfan Ahmed Quadri against Pramod Kumar Maheshwari, Mohd.Osman Patel and Ashok Sait seeking a declaration that he was the absolute owner and possessor of the suit schedule property, an extent of Ac.4-00 guntas in Sy.Nos.295 and 296 of Attapur Village, Rajender Nagar Mandal, Ranga Reddy District, out of the total extent of Ac.8-03 guntas in the said survey numbers; a perpetual injunction restraining the defendants from causing any interference with the suit schedule property; and for costs. The sole plaintiff having died in the year 2012, his two sons and three daughters were brought on record as plaintiffs 2 to 6, but one son, who was not sailing with them, was arrayed as defendant 4.

The specific case of the original plaintiff and thereafter, his legal representatives, in the suit plaint and the amended plaint was that they were in possession of the suit schedule property but since September, 2004, defendants 1 to 3 were trying to encroach upon and interfere with the suit schedule property. Significantly, the plaint schedule indicates that the suit schedule property is bounded on the North by houses in Sy.No.293 and water pipelines; on the South by the National Highway; on the East by part of Sy.No.293; and on the West by houses in Sy.Nos.294 and 297.

When the suit was at the stage of arguments, plaintiffs 2 to 6 filed I.A.No.1600 of 2017 therein under Order 26 Rule 9 CPC to appoint an Advocate-Commissioner for identification and location of the suit schedule

property in Sy.Nos.295 and 296 of Attapur Village, Rajender Nagar Mandal, Ranga Reddy District, and Sy.Nos.30, 31 and 32/2 of Bumrukund Dowla Village, Hyderabad West Taluq, Rajender Nagar Mandal, Ranga Reddy District, with the assistance of the Mandal Surveyor or Assistant Director, Survey, Settlement and Land Records, Ranga Reddy District. By order dated 18.12.2017, the trial Court dismissed the I.A. Aggrieved thereby, plaintiffs 2 to 6 filed this revision petition under Article 227 of the Constitution.

Heard Sri Vedula Srinivas, learned counsel for the petitioners/plaintiffs 2 to 6, Sri Srinivas Velagapudi, learned counsel on caveat for respondents 1 and 2/defendants 1 and 2, and Sri Shyam S. Agarwal, learned counsel on caveat for respondent 3/defendant 3.

In the affidavit filed in support of the subject I.A., the petitioners stated that defendant 1 (D.W.1), in his cross-examination, stated that he was in no way concerned with Sy.Nos.295 and 296 of Attapur Village and that he was claiming rights in land in Sy.Nos.30, 31 and 32/2 of Bumrukund Dowla Village. According to the petitioners, these two villages are divided by the National Highway leading from Hyderabad to Bangalore. They asserted that as defendants 1 to 3 were claiming land in different survey numbers which did not tally with the suit schedule property, it would be just and necessary to appoint an Advocate-Commissioner to locate the suit schedule property and the land in Sy.Nos.30, 31 and 32/2 of Bumrukund Dowla Village with the assistance of survey authorities. They further stated that though their brother, defendant 4, who had filed an independent suit in O.S.No.1147 of 2012 which was clubbed with their suit, got the suit schedule property surveyed with the help of the Assistant Director, Survey Settlement and Land

Records, defendants 1 to 3 may not accept the said report as they were not put on notice and it was therefore necessary for a fresh survey to be undertaken.

Defendants 1 and 2 filed a joint counter opposing this plea. Therein, they asserted that the petitioners were neither the owners nor possessors of land in Sy.Nos.295 and 296 of Attapur Village. They pointed out that the subject petition had been filed at the fag end of the trial and contended that the petitioners were trying to drag on the proceedings. They further stated that as the petitioners were not even in possession of the land, be it in Sy.Nos.295 and 296 of Attapur Village or in Sy.Nos.30, 31 and 32/2 of Bumrukund Dowla Village, the question of conducting a survey in respect of such land did not arise. They stated that the entire land in Sy.Nos.30, 31 and 32/2 of Bumrukund Dowla Village was in occupation of third parties who had constructed houses and were residing there and therefore, a survey could not be ordered in their lands behind their back. They concluded by stating that as the suit was of the year 2005 and was identified for disposal, the petitioners lacked *bonafides* in filing the subject I.A. at this stage.

Defendant 3 filed a separate counter opposing the I.A. on the same lines.

The trial Court, having considered the material on record and the rival submissions, opined that the I.A. was liable to be dismissed on two grounds. The trial Court observed that firstly, the subject suit had been clubbed with O.S.No.1147 of 2012 filed by defendant 4, wherein the report of the survey got done by defendant 4 with the help of the Assistant Director, Survey Settlement and Land Records, was filed and therefore appointment of an Advocate-Commissioner for the same

purpose in the present suit did not arise. Secondly, the trial Court noted that the petitioners were not in possession or enjoyment of the suit schedule property and as the same was under encroachment, it was impermissible to resort to survey of such land in the occupation of third parties at the instance of a person who was not in possession. The trial Court also found fault with the petitioners for not taking steps earlier and as the subject I.A. was filed when the suit was coming up for arguments, the trial Court held against the petitioners and dismissed the I.A.

The depositions of the original plaintiff (P.W.1) and his son who was brought on record as the plaintiff 3 (P.W.2) are produced. In his cross-examination, P.W.1 stated at one stage that it was not true to suggest that in the last thirty years he was never in possession of the suit schedule property but contradicted himself thereafter by admitting that the land in Sy.Nos.295 and 296 of Attapur Village was covered by houses and hillocks. He further stated that the houses had come up in Sy.Nos.295 and 296 by way of encroachments and admitted that the entire land in Sy.Nos.295 and 296 was under encroachment. Significantly, he then stated that he was not in possession of any land in Sy.Nos.295 and 296. This deposition was in February, 2008.

P.W.2, who gave evidence in the year 2017, admitted in his cross-examination that a part of the suit land was covered by a factory and the remaining part was covered by houses under construction. He also admitted that there was no land in their possession. He went on to state that originally the said land was in the possession of their father but for the last thirty years it was in the possession of the defendants. He then stated that he did not know whether his father had filed any suit or other proceedings seeking possession of the suit property and added that his

father had filed the present suit stating that the land was in the possession of the defendants and seeking its delivery.

Defendant 4 deposed as D.W.3 in the present suit. He categorically stated that he got surveyed the suit schedule property through the Assistant Director, Survey Settlement and Land Records, and a panchanama was conducted on 22.10.2009, when the Assistant Director demarcated Sy.Nos.295 and 296 of Attapur Village in File No.A1/755/09.

Significantly, it is not the case of the petitioners that they are unwilling to accept the aforestated survey report. On the other hand, their plea was that defendants 1 to 3 in the suit might not accept the said report as the survey was undertaken without notice to them at that time. However, defendants 1 to 3 did not state so in their counters. Most significantly, though the petitioners now claim that the issue is a boundary dispute as to the location of Sy.Nos.295 and 296 of Attapur Village on the one hand and the land in Sy.Nos.30, 31 and 32/2 of Bumrukund Dowla Village on the other, the plaint schedule indicates that the suit schedule property is bounded on the south by the National Highway which separates the suit schedule property from the land in Sy.Nos.30, 31 and 32/2 of Bumrukund Dowla Village. There is no purpose in undertaking a survey of the lands in the two sets of survey numbers when they are separated by a determinate boundary, *viz.*, the Highway. Further, the evidence of the original plaintiff and thereafter, his son, clinchingly establish that they are not in possession of the suit schedule property.

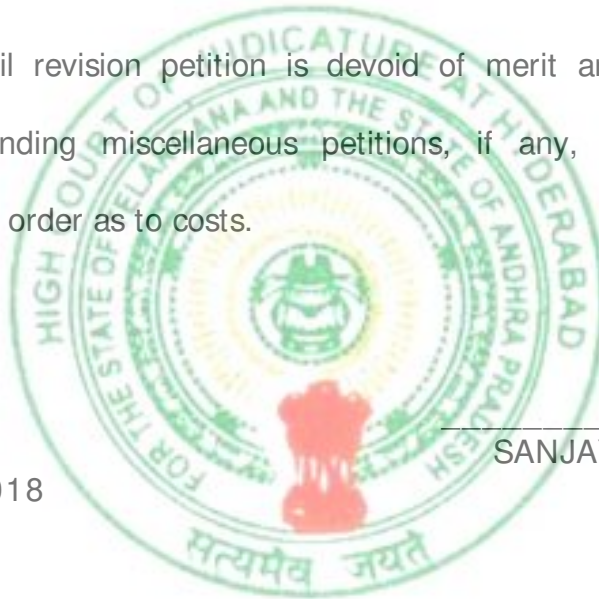
Though Sri Vedula Srinivas, learned counsel, would argue that stray statements in the evidence may not be held against the petitioners, this Court finds that given the suit prayer for a perpetual injunction on the strength of the premise that the plaintiffs are in possession, the

admissions made by them in their evidence to the contrary must necessarily weigh against them even in the context of their seeking appointment of a Commissioner under Order 26 Rule 9 CPC.

In the light of the aforesaid circumstances, appointment of a Commissioner at this stage would only be for the purpose of gathering evidence. As such an exercise cannot be undertaken and, all the more so, when the suit is coming up for arguments, this Court finds the petitioners utterly lacking in *bonafides* in seeking such a relief at this late stage. The order under revision therefore does not brook any interference, be it on facts or in law.

The civil revision petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

6th APRIL, 2018
PGS



SANJAY KUMAR, J