

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.595 of 2014

ORDER:

This civil revision petition is filed questioning the order, dated 22.01.2014, passed in I.A.No.1598 of 2013 in O.S.No.177 of 2013, by the Principal Junior Civil Judge, Sangareddy.

The suit O.S.No.177 of 2013 is filed for an injunction. The copy of the plaint filed shows that a prayer was made both for mandatory and for perpetual injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. The matter was contested and at that stage, I.A.No.1598 of 2013 was filed to appoint an Advocate-commissioner to physically examine and record the petition schedule property with the help of the Government Surveyor. The respondents in the lower court and the revision petitioners herein filed a counter and opposed the application. The application came to be allowed by the orders, dated 22.01.2014, which are now impugned in this revision petition.

This court has heard Sri G.Tirupathi Reddy, learned counsel, appearing for the petitioners, and Sri Manda Adam, learned counsel, appearing for the respondent.

The learned counsel for the revision petitioners states that the suit is filed both for mandatory and for perpetual injunction and that therefore, possession of the respondent is admitted. He also submits that the document, on the basis of which the plaintiff claims title to the property, does not have any boundaries. It is his further contention that the plaintiff in the suit will have to establish and prove her own case, and that

the appointment of the advocate-commissioner in a case like this would amount to gathering of evidence, which is prohibited under law, and therefore, the learned counsel strongly urges that the order passed by the court below is contrary to the settled legal position.

In response thereto, the learned counsel for the respondent submits that no harm will cause to the revision petitioners if the advocate-commissioner is appointed. He points out that since the dispute relates to the boundaries, there is no other option available except to file an application to note down the physical features and the boundaries of the property. Therefore, the learned counsel for the respondent supports the impugned order.

The point for consideration is whether the lower court is right in appointment of an advocate-commissioner.

As can be seen from the reading of the plaint, it is not very happily drafted. Although a mandatory injunction is sought, it is only sought to restrain the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the schedule property. The written statement filed by the defendants is not in the court record. However, while perusing the lower court order, this court notices that the dispute in this case revolves round the boundaries. This court also notices that as the plaintiff's document did not contain any boundaries, the court below proceeded to appoint an advocate-commissioner. In cases where a local investigation is necessary to determine certain facts, the court is definitely empowered to appoint a commissioner. In the case on hand, as the dispute centers round the boundaries and oral evidence coupled with the plaintiff's document may not really establish the boundaries, this court is of the opinion that the lower court is right in so far as appointment of an

advocate-commissioner to physically examine and record the details of the plaint schedule property with the help of the Assistant Director of Survey. That part of the order for noting the physical features and the recording of the boundaries cannot really be faulted. However, this court notices that the lower court directed the advocate-commissioner to fix the boundaries of the plaintiff's property as well as defendants' property with the help of the village map and the sale deed of the defendants. This is beyond the prayer made in the application itself.

As rightly contended by the learned counsel for the petitioners, the respondent/plaintiff will have to prove her own case and she cannot rely on the defendants' document or the boundaries mentioned in the document for the purpose of proving her case.

Therefore, the civil revision petition is partially allowed. The appointment of the advocate-commissioner to localize the suit schedule property with the help of the Assistant Director of Survey and Land Records is held to be correct. Rest of the impugned order is set aside.

The lower court is directed to proceed with the trial of the suit on priority, as the suit is of the year 2013. Needless to say that the lower court shall proceed with the trial of the suit and dispose of the same, in accordance with law, without in any way being influenced by what is stated in this order.

Pending miscellaneous applications, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

Date: 28.11.2018
Dsr