

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1874 of 2018

ORDER:

Heard.

2. The very impugned order of the learned Principal District Judge, Prakasam at Ongole, dated 30.11.2017, in C.M.A.No.15 of 2016 what was observed from para 21 of the impugned order printed page 18/20 onwards is that pursuant to the directions of this Court (in C.R.P.No.6295 of 2016, dated 23.02.2017) the appeal is restored to file, so also the petition in I.A.No.68 of 2017 filed under Order XXVI Rule 9 C.P.C. by renumbering the same as I.A.No.1068 of 2017 and the Advocate Commissioner, who already visited the suit property and filed report, has been re-entrusted with the warrant directing him to measure the plaint schedule property and also the land of the respondents with reference to their documents of title and the Commissioner returned the warrant without execution on the ground that parties have not shown any interest in execution of the warrant. The further observation is no reason whatsoever are forthcoming from the respondents for their inaction and disinterestedness in not getting the warrant executed, whose contention it is that the localization of the property is very much necessary for proper adjudication of the matter, leave about the inaction and not showing any interest in execution of the warrant, if any, by the appellants.

3. From para 22, it is further observed, in view of the above observations and findings, since the petitioners could prove the essential ingredients of prima facie case, balance of convenience and irreparable loss that would cause if injunction not granted, they are entitled to temporary injunction taking aid of the decisions in **Dinesh Chandra Jaiswal v. State of Uttaranchal**¹ and **Sachi Prasad Mukherjee v. Pampa Kumar**² of Court will not refuse injunction in case the defendants will get an undue advantage over the plaintiff. In so answering the point in favour of the appellants and against the respondents in granting the injunction.

4. In fact, for the very existence of prima facie case what the lower Court did not properly consider is the showing of existence of a public punta. From perusal of the lower appellate Court's order, there are no any new documents marked. From perusal of the order of the learned Junior Civil Judge in I.A.No.196 of 2016, dated 19.08.2016, against which the C.M.A. maintained, Exs.P.1 to P.3 and Ex.R.1 filed. Ex.P.1 is the registered settlement deed executed by the 2nd petitioner in favour of the 1st petitioner, dated 10.11.2000 a self-serving document. Ex.P.2 is the certified copy of sale deed, dated 07.12.1992 executed by M.R.Mohan Rao in favour of 2nd petitioner/2nd plaintiff and Ex.P.3 is the electricity payment receipts (2) in number. If at all there is any crucial document i.e., Ex.P.2 for existence of any punta and in the lower appellate Court's order, there is nothing even

¹ AIR 2004 Uttaranchal 19

² AIR 2004 Calcutta 310

reflected. Leave about no document filed by the respondents/defendants, but for 24 photographs with C.D. saying there is no donka or passage adjacent to the plaintiff's land shown in the plaint schedule site or to reach any road much less up to northern edge of petitioners. Once such is the case, the relevant document if at all is the field measurement book of any noting of the existence of Punta in any particular survey number with demarcation as to in between, what sub-divisions or survey numbers that punta was running with width and any permanent revenue record or village plan showing any existence of such punta. Nothing is filed either before the trial Court or before the lower appellate Court by the plaintiffs/petitioners. Once such is the case, it is required to demarcate with reference to the revenue record and the title deed covered by Ex.P.2 of any existence of punta is noted by demarcation and showing about its existence, which is crucial and it is the reason, thereby this Court earlier re-entrusted the warrant to the Commissioner for execution by demarcation with survey. It is in fact the duty of the plaintiffs, who sought the relief of injunction and also suit reliefs for injunction, in claiming the existence of a public punta to establish. Once that is not there, the question of consideration of existence of prima facie case, much less any balance of convenience or irreparable injury, the other two requirements of showing the pre-requisites supra does not arise from the settled position. Thereby, the order of the lower Court merely saying that if the water from the land of the plaintiffs/petitioners cannot be allowed to let out, the cultivating

fish and prawn in the field would be died and balance of convenience and irreparable loss with that is prima facie case is practically untenable. Once such is the case, the order of the lower court is liable to be set aside and if at all the earlier Commissioner is not interested, the lower court is directed, by virtue of this order, to name another Commissioner and entrust the same warrant for demarcation of the property, for which it is the petitioners/plaintiffs that has to secure the survey assistance and the revenue record, for the Commissioner to summon and to demarcate. If at all the defendants are not cooperating, giving of notice is enough for the defendants, for the Commissioner to proceed with the matter. If at all plaintiffs are not cooperating, the Commissioner shall specifically say the same while returning the warrant.

5. With these observations, the civil revision petition is allowed. By keeping in existence the *status quo* till 11.06.2018, the order of the lower Court is set aside, for re-determination, if not to dispose of the suit pursuant to the earlier direction to the extent possible.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

25th April 2018

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Dr. B. SIVA SANKARA RAO, J