

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1316 of 2017

ORDER:

This revision is filed by the petitioner/plaintiff, aggrieved by the order dated 08.03.2017 in CMA No.2 of 2017, wherein the learned Principal District Judge, Khammam, confirmed the order dated 05.01.2017 in I.A.No.145 of 2016 passed by the Senior Civil Judge, Khammam.

2. The revision petitioner herein, who is the plaintiff filed O.S.No.33 of 2016 for perpetual injunction against five defendants i.e., 1. The District Collector, Khammam, 2. The Tahsildar, Khammam Urban Mandal, 3. The Superintending Engineer, N.P.D.C.L., Telangana, 4. The Executive Engineer, N.P.D.C.L., Telangana and 5. The Deputy Executive Engineer, N.P.D.C.L., Telangana. The plaint schedule property consists of Ac.1.02 guntas in Sy.No.80 of Pakabanda revenue Village, Mamatha Hospital Road, Khammam. The land in Sy.No.80, undisputedly, shows Ac.9.06 guntas.

3. The fact that Sy.No.80 originally belonged to the plaintiff's parents-in-law from the revenue record not of much in dispute. In the lower Court, pending disposal of the suit for perpetual permanent injunction against defendants,

temporary injunction sought for in I.A.No.145 of 2016. Initially that relief was granted. However, on contest, it is ended in dismissal, by order, dated 05.01.2017 by vacating the ad-interim ex parte order of status quo dated 03.03.2016. Impugning the same, plaintiff maintained CMA No.2 of 2017 and the same was also ended in dismissal on 08.03.2017. Aggrieved by the same, this revision is filed.

4. Exs.P1 to P10 and R1 to R8 were exhibited by the lower appellate Court in the CMA. Before the trial Court, there were no documents filed in I.A.No.145 of 2016.

5. The observation of the learned Senior Civil Judge, where status quo order originally granted, later, on contest, the same was vacated, particularly, from paras 7 and 8 are that plaintiff did not file any documents showing the plaint schedule property belongs to her, except relying upon the revenue pahanis, in showing pursuant from which plaintiff is in possession and enjoyment. The Government acquired Ac.1.33 guntas in Sy.No.80 way back in the year 1977 and the proceedings are referred in support of it. To the contention of the plaintiff, still there is Ac.1.06 guntas of land out of the total extent of Ac.9.06 guntas, despite the above acquisition, once there are no documents, no temporary injunction can be granted.

6. The lower appellate Court with reference to Exs.P1 to P10 and R1 to R8 observed that Ex.P10- adangals for the periods from 1958 to 2015 show an extent of Ac.7.34 guntas in the name of V.Laxmi Narayana (husband of the plaintiff) for Sy.No.80. It is because out of Ac.9.06 guntas or 08 guntas total extent as the case may be, Ac.1.14 guntas was sold to one P.Sunita that is shown in the sub-division as Sy.No.80/ A. The revenue records show, after acquisition for the by-pass road and any acquisition for N.S.P.Canal respectively of Ac.1.33 guntas and Ac.1.06 ½ guntas, there were no sub-divisions for the acquired extents. Ex.R8-award proceedings of Sy.No.80 and other survey numbers show the acquired extent of Ac.1.33 guntas in two parcels. One parcel is Ac.1.24 guntas with sub-division '2A' and another parcel is Ac.0.09 guntas with sub-division '2A'. Ex.R8 shows V.Laxmi Narayana participated in the award proceedings and filed objection to the report of the Patwari of the village in claiming that the acquired lands are part of his land in Sy.No.80 and there was a Section 30 Land Acquisition Act reference also in this regard. There from, observed none of the documents show possession of the plaintiff over the plaint schedule property and the lower Court is right in dismissing the temporary injunction application.

7. Undisputedly, Exs.P1 to P10 show the plaint schedule property in the name of plaintiff including from what was observed by the Courts below.

8. So far as acquisition of Ac.1.33 guntas in two items of 9 guntas + Ac.1.24 guntas, the sub-division shown as 80/ 2A, the contention of the learned counsel for the plaintiff/ appellant is that those properties are not part of the total extent of Ac.9.00 and odd guntas of Sy.No.80, but, those belong to third parties by names, V.Laxmi Narayana and Johan Khan and what was acquired out of Ac.9.08 guntas of the plaintiff by the Government is Ac.1.06 ½ guntas and still suit property remains with the plaintiff as claimed in the plaint, for which though there are no documents the plaintiff could file, once the adangals show the plaintiff in possession and enjoyment, the defendants cannot interfere with the same.

9. The submission of the learned Government Pleader for Arbitration representing the official respondents 1 and 2 vis-à-vis the learned Standing Counsel for the N.P.D.C.L (Telangana) respectively is that even from referring to Ex.P8, those extents covered by Ac.1.33 guntas supra is not beyond or out of, but, part of Sy.No.80 total extent of Ac.9.06 guntas or 8 guntas as the case may be and once that is

excluded, plaintiff has no even a single gunta of land in Sy.No.80 and it is a false claim by the plaintiff, taking advantage of the revenue records change not affected, in making a vain contest and it is a speculative litigation.

10. In fact, once the pahanis also show the possession of the plaintiff and when the total extent of Sy.No.80 requires measurement and demarcation including of different extents sold by the plaintiff and her predecessors in interest including the land acquired by the Government out of it and to refer and correlate if possible whether Ac.1.33 guntas covered by Ac.1.24 guntas + 9 guntas are part of Sy.No.80 total extent of Ac.9.08 guntas or different to it and thereby it requires appointment of an advocate commissioner for measurement and demarcation with reference to revenue records and any documents being filed by the plaintiff including the alienations made by the plaintiff predecessors in interest to the third parties out of their total extent in support of their claim and then to identify whether construction has been taken up by the defendants in any part of the plaint schedule property belongs to the plaintiff or it is in part of the acquired property.

11. Accordingly, the Civil Revision Petition is allowed by setting aside the order dated 08.03.2017 in CMA No.2 of 2017

passed by the Principal District Judge, Khammam, by restoring the CMA to its file, with a direction to the Principal District Judge to name an advocate commissioner, issue warrant for measurement and demarcation as referred supra with Surveyor assistance, to identify the property and to submit a report and there from dispose of the appeal afresh. In the meantime, existing status quo shall be maintained by both the parties. Since the respondents/defendants are contending that the construction activity is under stand still and it gives a huge financial loss to the Department, the lower appellate Court shall make every endeavour after submission of advocate commissioner's report, for early disposal of CMA, preferably within two months, from the date of receipt of copy of this order. The plaintiff has to bear the expenses of the advocate commissioner.

12. Consequently, miscellaneous petitions, if any shall stand closed. No order as to costs.

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JUSTICE Dr. B.SIVA SANKARA RAO

Date: 02.01.2018

Note:

Issue C.C. in four days.

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