

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P.No.1774 of 2018

ORDER:

1. This CRP is filed by the defendants 1 and 2, aggrieved by the order dated 16-02-2018 in I.A.No.454 of 2017 in O.S.No.358 of 2014 passed by learned Senior Civil Judge, Huzurnagar allowing the petition filed by the respondent/plaintiff seeking appointment of advocate-commissioner to note down the physical features and measure the entire land in Sy.No.163 of Ganapavaram Revenue Village and also the petition schedule land to an extent of Ac.0-30 guntas in Sy.No.163/A, 163/2, 163/6 situated at Ganapavaram revenue village and to fix boundary stones to the petition schedule land with the help of Mandal Surveyor.

2. The respondent/plaintiff filed O.S.No.358 of 2014 against the petitioners/defendants seeking relief of declaration of title and recovery of possession of plaint schedule land and other reliefs. The suit land is an agricultural land measuring Ac.0-30 guntas in Sy.No.163/A, 163/2 and 163/6 situated at Ganapavaram revenue village. The plaintiff's claim is that her

father one Kurra Ramulu who owned agricultural wet lands to an extent of Ac.2-23 guntas in Sy.Nos 163/A, 163/2, 163/6 and an extent of Ac.0-30 guntas, which is the plaint schedule land conveyed to her towards 'pasupu kumkuma' and the plaintiff and her husband have been enjoying the same. Her further case is that defendant No.1 got fabricated and created some documents and illegally trespassed and occupied the plaint schedule land. The plaintiff is an old lady and though, she applied to the 3rd defendant who is the Tahsildar for measuring entire extent of lands covered by Sy.No.163 and demarcate the plaint schedule land, he did not do so. Hence the suit.

3. The contention of the 1st defendant in the written statement is that the father of the plaintiff owned only Ac.2-23 guntas in Sy.No.163/A and later he sold an extent of Ac.2-00 guntas to one Kampasati Muthaiah. His name was entered in revenue records. As such, remaining extent of Ac.0-23 guntas was given to the plaintiff and her name is entered in revenue records for Sy.No.163/2 from the pahani year 2001-02. Except that land, the plaintiff has no other land in any survey numbers in that vicinity. So far as the 1st defendant is concerned, he owns and possess the agricultural

land to an extent of Ac.08-10 guntas in Sy.No.163/C and the same was obtained by the 1st defendant from one Gaddam Suraiah, which is evident from the records. Thus the 1st defendant denied the plaintiff's contention that he trespassed into the plaint schedule land and occupied the same. The 1st defendant claimed that the suit land is part of his land.

4. While so, the plaintiff filed I.A.No.454 of 2017 seeking to appoint the commissioner, which was opposed by the defendants. The trial Court having observed that admittedly the 1st respondent/the 1st defendant is southern boundary holder of the petitioner/plaintiff, as the main suit is filed for comprehensive relief of declaration of title and recovery of possession and having regard to the nature of pleadings of both parties, it was expedient for the Court to appoint an advocate-commissioner, as prayed for and accordingly, allowed the said petition. Hence the instant CRP at the instance of defendants.

5. Heard learned counsel for the petitioners and respondents.

6. On close scrutiny of the respective pleadings of the parties, it is evident that while the respondent/plaintiff claimed that the suit schedule property of Ac.0-30 guntas, which is

said to be covered by Sy.No.163/A, 163/2 and 163/6 as the property conveyed on her by her father. The contention of the 1st defendant, who is the southern boundary holder of plaintiff's land is that the plaintiff's father had Ac.2-23 guntas of land. Out of which, he sold Ac.2-00 guntas to one K.Muthaiah and remaining extent of Ac.0-23 guntas is in possession and occupation of the plaintiff and she is not the owner of Ac.0-30 guntas of land i.e. plaint schedule land.

7. Having regard to the nature of respective contentions, as rightly observed by the trial Court, the appointment of advocate commissioner for noting down the physical features of the land and measuring the entire land in Sy.No.163 of Ganapavaram Village and surveying through Mandal Surveyor and fixing boundary stones will help the Court to appreciate the respective contentions of the parties. Therefore, the appointment of advocate-commissioner in this case cannot be said to be either for collection of evidence or a futile exercise. Therefore, the contention of petitioners that the impugned order of the trial Court is a wasteful exercise cannot be countenanced. The petitioners/defendants, of course, have right to question the correctness of commissioner's report by filing their objections, if any, after commissioner files his

report and such objections, if any, shall be taken into consideration by the trial Court.

8. With these observations, the CRP is dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO,J

13-07-2018

Nvl

