

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.2731 of 2018

ORDER:

Feeling aggrieved by the order dt.21.02.2018 in I.A.No.1068 of 2017 in O.S.No.108 of 2016 passed by the learned Senior Civil Judge, at Miryalaguda, allowing the petition filed by the plaintiff under Order XXVI Rule 9 CPC r/w Section 151 CPC to appoint an Advocate Commissioner, the defendants filed the instant CRP.

2) The factual matrix of the case which led to file the instant CRP is thus:

a) The respondent/plaintiff filed O.S.No.108 of 2016 against defendants seeking recovery of vacant possession of suit schedule property admeasuring 1350 sq.yards in Sy.No.85/12 (sic Sy.No.85/3) of Venkatadripalem village and mandatory injunction directing defendants to remove the compound wall and other illegal constructions made over the suit property. Plaintiff's case is that he is the owner of the suit land measuring 1350 sq.yards in Sy.No.85/3 situated in Venkatadripalem Revenue Village. The defendants are the neighbouring land owners running the rice mill under the name and style Saroja Rice Industries. In the absence of plaintiff, the defendants encroached upon the suit land of the plaintiff on eastern side and constructed a compound wall around their rice mill illegally occupying the suit property. The defendants denying the plaint allegations contended that they purchased Ac.1-26 gts along with Sri Laxmi Balaji Binni Rice Mill in an open auction

conducted by State Bank of Hyderabad under SARFAESI proceedings when the original owner of the aforesaid rice mill Sri Danavath Ravinder Naik committed default in discharging the bank loan. Ever since the defendants have been enjoying the rice mill property including the suit property. Thus the defendants contended that the suit property is part of the land and rice mill purchased by them in the public auction conducted by SBH and denied the right of plaintiff. While-so, the plaintiff filed petition to appoint Advocate Commissioner to measure the Sy.No.85/3 and also the defendants property with the help of a Mandal Surveyor so as to apprise the Court about the encroachment. The Trial Court having observed that there was a dispute with regard to the schedule property, felt that appointment of the Commissioner would help in arriving at proper decision in the suit and allowed the petition.

3) Heard arguments of Sri P.Prabhakara Rao, learned counsel for petitioners and Sri Vangari Vithal, learned counsel for respondent.

4) It is a case where the plaintiff alleges that the defendants, who are the neighbouring owners of the rice mill, encroached into his vacant land in an extent of 1350 sq.yards and constructed a compound wall around their rice mill. Whereas the defendants would contend that they have purchased Ac.1-26 gts of land along with rice mill in an open auction conducted by State Bank of Hyderabad under SARFAESI proceedings and the suit schedule property is part of the land purchased by them and thus they denied the plaintiff's right. Whether the suit land which is the bone of contention between both the parties is part of the land purchased

by plaintiff or whether it is part of the land purchased by the defendants in the open auction, in my considered opinion, cannot be decided by perusing the oral and documentary evidence and as rightly observed by the Trial Court, the same can be decided only by taking the physical measurements of both properties by an Advocate Commissioner through a Mandal Surveyor. Such an exercise cannot be regarded as collection of evidence, rather, the said exercise will help in better appreciation of the oral and documentary evidence to be adduced by the parties. Therefore, I find no illegality or perversity in the order impugned.

5) Accordingly, this C.R.P is dismissed by confirming the order in I.A.No.1068 of 2017 in O.S.No.108 of 2016 passed by the learned Senior Civil Judge, at Miryalaguda. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 02.07.2018

scs