

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2594 OF 2018

ORDER:

The unsuccessful petitioners – plaintiffs filed this revision petition, under Article 227 of the Constitution of India, assailing the order, dated 19.03.2018, of the learned Senior Civil Judge, Markapur, passed in I.A.No.225 of 2018 in O.S.No.152 of 2010.

2. I have heard the submissions of *Sri S.V.R. Subrahmanyam*, learned counsel for the petitioners, and of *Sri G.L. Nageswara Rao*, learned counsel for the contesting unofficial respondent – defendant. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude, in brief, are as follows:

“The plaintiffs brought the suit for recovery of money, which according to the plaintiffs is the compensation amount, which they are entitled to claim in respect of a portion of the land that belongs to them, and which was acquired by the Government. The defendants are resisting the suit. In the said suit, the plaintiffs filed the subject Interlocutory Application for appointment of an Advocate Commissioner to make a local inspection of Survey no.10 of Yerrabalem Village of Cumbum Mandal, and also to inspect the fields with the help of the Mandal Surveyor and prepare a sketch/plan with reference to the field sketch filed by the Tahsildar, Cumbum, and file a report. The said application was resisted by the contesting defendant. On merits, and by the order impugned in this revision petition, the trial Court dismissed the application. Therefore, the plaintiffs are before this Court.”

4. The plaintiffs' case in support of the said request may be stated, in brief, as follows:

The defendants 1 & 2 commenced and carried out land acquisition proceedings in respect of the land in Survey no.10 of Yerrabalem Village, Cumbum Mandal, for Velugonda project. An extent of Ac.6-80 cents was acquired. The acquired extent was sub-divided as S.no.10/2. The said acquired extent is in two blocks. The first block consists of an area of Ac.2-05 cents; and, the second block consists of an area of Ac.4-75 cents. In the second block, covering an area of Ac.4-75 cents, the 3rd defendant in the suit is entitled to only Ac.3-40 cents and the remaining extent of Ac.1-35 cents is owned and possessed by the plaintiffs. However, the 3rd defendant made a claim for the entire extent of Ac.4-75 cents in the acquired portion of the second block and received compensation to the detriment of the plaintiffs. Therefore, the plaintiffs brought the suit for recovery of the compensation amount, to which they are entitled to in respect of Ac.1-35 cents of land, which is part of the acquired land and which belongs to the plaintiffs. In view of the facts that the acquired land is Ac.6-80 cents and that it is in two blocks and as the plaintiffs are claiming only a portion of the land in one of the blocks, it is necessary to demarcate the land & prepare a sketch and file a report before the trial Court to enable the plaintiffs to establish the claim of the plaintiffs in respect of the compensation payable for the above said extent of acquired land. Hence, the subject application is filed.'

5. The case of the 3rd defendant is this: 'The acquisition proceedings took place 10 years back. The ridges are not available. It is not possible

now to point out the ridges & localize and prepare a plan of the acquired land, particularly the portion of the land, which is being claimed by the plaintiffs. Mere visit of an Advocate Commissioner, therefore, is not going to serve any purpose.'

6. At the hearing, learned counsel for the plaintiffs and the learned counsel for 3rd defendant reiterated the cases pleaded by the parties, which are extracted supra.

7. I have given earnest consideration to the facts and submissions. As rightly urged by the learned counsel for plaintiffs, since the entire extent of land of Ac.6-80 cents, now in Survey No.10/2, which was acquired, is not in one block and as the said extent is in two blocks and that as the plaintiffs' claim relates to only a portion of the land admeasuring Ac.1-35 cents in one of the blocks and as the plaintiffs are disputing the claim of the 3rd defendant in respect of the entire extent of Ac.4-75 cents in the said second block and as the claim of the plaintiffs and the rival claim of the 3rd defendant require detailed examination, the inspection of the land and preparation of the sketch as sought for by the plaintiffs is necessary for resolving the controversy, in the considered view of this Court. Further, it is to be noted that the evidence, which the Commissioner gathers by making local inspection and conducting survey, cannot otherwise be procured; and, such evidence can be procured only by issuing a commission. More over, such evidence, which the plaintiffs may be able to secure by seeking appointment of an Advocate Commissioner, would be helpful to the trial Court to effectively determine the issues involved in the suit. Hence, this Court finds that the plaintiffs are justified in seeking appointment of an Advocate Commissioner for the

purpose desired by them. What is to be next noted is that the trial Court failed to consider the facts and the request of the plaintiffs in proper perspective and erroneously dismissed the application of the plaintiffs ignoring the fact that in the event of the prospect of the Commissioner doing the needed work, his report with the plan, if any, would serve as one more assured piece of evidence, which would be helpful for effective adjudication of the *lis*. Though the 3rd defendant contended that at this distance of time, the ridges being not available, it will not be possible for the Commissioner, even if appointed, to do the work desired by the plaintiffs, be it noted that on mere contention of the 3rd defendant, the application of the plaintiffs need not be dismissed and that on the other hand, it is appropriate to leave the matter to the Advocate Commissioner, who may be appointed, to make inspection and furnish the report and plan as sought for by the plaintiffs, if it is feasible. On the above analysis, this Court finds that the order impugned brooks interference and is liable to be set aside.

8. Accordingly, the Civil Revision Petition is allowed and the impugned order is set aside. Consequently, I.A.No.225 of 2018 is allowed and the trial Court is now directed to appoint an Advocate Commissioner, from the panel of Advocates being maintained by it, for the purpose desired by the plaintiffs.

There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this revision petition shall stand closed.

M.SEETHARAMA MURTI, J

August 24, 2018
MD