

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

C.R.P.No.2560 of 2018

ORDER:

This CRP is disposed of at the admission stage, as this Court is of the considered view that there is no exigency of issuing notice to the respondents.

This CRP is filed by the petitioners/defendants aggrieved by the order dated 12-02-2018 in I.A.No.29 of 2016 in O.S.No.95 of 2013 passed by the learned Junior Civil Judge, Alair dismissing the petition filed by the petitioners/defendants to appoint advocate-commissioner to demarcate the suit schedule property with the help of mandal surveyor and the revenue authorities. The respondent/plaintiff filed suit O.S.No.95 of 2013 against the petitioners/defendants seeking decree of Perpetual Injunction in respect of the plaint schedule property of Ac.04-20 guntas in Sy.No.84/C/AA situated at Basanthapuram Village, Rajapet Mandal, Nalgonda District.

The plaintiff's case is that he is the owner and possessor of plaint schedule land, which was acquired by him from the father of the 1st defendant, who is his junior paternal uncle namely Mendu Laxmi Narsimha Reddy. It is the further case of the plaintiff that the 1st defendant is having land adjacent to the suit land on southern side in Survey No.85 and therein, the 1st defendant raised mango garden and thus there is a clear-cut demarcation between the land of the

plaintiff and defendants and hence, the plaintiff is the exclusive owner of the suit land. Whereas, the defendants are the owners of the land covered by S.No.85 and having no right over the plaint schedule land, however they tried to trespass into the land and erect stone pillars in the suit land on 10-06-2009, which attempt was thwarted by the plaintiff. Hence, the suit.

The defendants filed written statement and it is contended that the plaint averments to the effect that the defendants have no right over the suit schedule property is incorrect. The plaintiffs having taken advantage of wrong entries in revenue records trying to encroach into the land of defendants, which they are in possession in an extent of Ac.0-12 ½ guntas in the suit survey No.84/C. The 1st defendant is having patta to an extent of Ac.00-05 guntas and the 2nd defendant is having patta to an extent of Ac.00-07 ½ guntas out of aforesaid Ac.12 ½ guntas of land. The said land is on the southern side of the suit land abutting to the Sy.No.85, which exclusively belongs to the defendants. The plaintiff, who is agnate of defendants purchased the suit schedule land to an extent of Ac.2-00 guntas from the 1st defendant and an extent of Ac.2-20 guntas from one Laxminarsimha Reddy and taking advantage of the same, the plaintiff tried his level best to occupy Ac.1 ½ guntas in Sy.No.84/C. Thus, the defendants while admitting the title of the plaintiffs in respect of Ac.4-20 guntas, but denied

the plaintiff's right in respect of an extent of Ac.12 ½ guntas in Sy.No.84/C, which is abutting to the land purchased by the plaintiff.

While so, for the purpose of demarcating the suit land, the defendants filed a petition to appoint an advocate-commissioner. The respondent/plaintiff opposed the same. The trial Court dismissed the petition with the observations that earlier the petitioners/defendants filed petition to appoint advocate-commissioner to note down the physical features of the property, which was dismissed and the same was confirmed by the High Court. The petitioners/defendants were given opportunity to adduce the evidence and thereafter, when the matter was coming up for arguments, the petitioners/defendants again filed an application to appoint an advocate commissioner to demarcate the suit schedule land. The trial Court further observed that the respondent/plaintiff since filed the suit, burden lies on him to establish that he is in possession of the suit schedule property with respect to boundaries cited in the schedule. Already sufficient opportunity was given to the petitioners/defendants to rebut the same and the petitioners did not choose to file any rough sketch before the Court in support of their contention and therefore, there were no merits in the defendants' case and accordingly, the trial Court dismissed the petition. Admittedly, the petitioners/defendants filed

petition with more or less for same relief and the same was dismissed and confirmed by the High Court. Now at the stage of arguments, the petitioners/defendants come-up with similar petition, of course with slight modification i.e. for noting down the physical features as well as for demarcating the suit schedule property. Since this petition is filed at belated stage when the matter is coming-up for arguments and also the present petition is almost similar to earlier one, which was dismissed, the trial Court was right in holding that there are no merits in the application. As rightly observed by the trial Court the plaintiff who has filed the suit seeking perpetual injunction decree has to establish that he is in lawful possession of the suit land within the boundaries mentioned in the plaint and if he fails to establish his case, certainly he will be non-suited. At any rate, there are no merits in the CRP. The impugned order does not suffer from any illegality or perversity.

Accordingly, the CRP is dismissed. As a sequel, miscellaneous applications pending, if any, shall stand closed.

U.DURGA PRASAD RAO,J

13-07-2018

Nvl