

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.R.P.NO.1178 OF 2014

ORDER:-

This revision petition is filed questioning the order dated 12-02-2014 passed in I.A.No.1583 of 2013 in LGC No.4 of 1999.

2. I.A.No.1583 of 2013 is filed under the provisions of Order XXVI Rule 9 CPC to locate the land with reference to Exs.A-1 to A-3 sale deeds as well as to locate 423 square yards claimed by the respondents herein.

3. The petitioners in I.A.No.1583 of 2013 are the applicants in Land Grabbing Case No.4 of 1999. LGC 4 of 1999 was heard and orders were passed initially. Against the same, an Appeal LGA No.18 of 2006 was filed. The Land Grabbing Appeal was disposed of by an order dated 09-11-2012. In that order, an opinion was expressed by the appellate court which held that there is a need on the basis of the available evidence to localize the lands and for that purpose a Commissioner should be appointed. Basing on this finding of the appellate court, the present application was filed and the same was allowed. It is this order of appointment of Commissioner that is questioned in the present revision petition.

4. This court has heard Sri Bankatlal Mandhani, learned counsel for the petitioner and Sri V.Hari Haran, learned counsel for the respondents.

5. The contention of the learned counsel for the petitioner is that the Advocate Commissioner is being appointed only for the purpose of gathering of evidence. It is his contention that the petitioners who have applicants in the LGC have to necessarily plead and prove that the respondents are land grabbers and also establish the exact extent of the land which is the subject matter of land grabbing. It is his submission that merely because the appellate court expressed some opinion, the lower court cannot appoint Advocate Commissioner for the purpose of ascertaining the land with reference to the boundaries. He submits that this is a clear and simple case of gathering of evidence which is prohibited under the law.

6. In reply thereto, the learned counsel for the respondents submits that in the peculiar facts and circumstances of the case as there is a dispute about the extent of the land covered by the documents, viz., namely Exs.A-1 and A-3, there is a need and necessity to appoint the Advocate Commissioner for the purpose of localizing the land. It is his submission that the Advocate Commissioner can be appointed for the purpose of conducting local

investigation and the same is not prohibited under the provisions of Order XXVI Rule 9 CPC. It is also the contention of the learned counsel that the fact that the remand order notices the missing details in the documents and this would clearly show that there is a need for further adjudication in the matter and also the need for local investigation. The learned counsel also submits that no hardship would be caused to the revision petitioner as the Commissioner's report has to be received in evidence and the same will be subject to cross examination. Therefore, it is the submission that in view of the peculiar facts and circumstances of the case, appointment of an Advocate Commissioner is not incorrect. The learned counsel also points out that the court below directed the Advocate Commissioner to take the assistance of the Surveyor of the Office of the Assistant Director of Survey and Land Records with reference to the tippons and other records for conducting a survey. This, the learned counsel submits, would result in localizing the property rather than gathering evidence.

7. After hearing both the counsels, this court feels that the three documents which are crucial for this case are Exs.A-1, Ex.A-3 and the agreement of sale which is marked as Ex.B-3. This court notices that the appellate court considered each of these documents. The appellate court

noticed that Ex.A-1 contains the four boundaries and the extent is 1140 square yards. No survey numbers are, however, mentioned in the document, but four boundaries are given. The extent of the land in Ex.A-3 is not mentioned and no boundaries are also mentioned. The court, however, noticed that there is a plan appended to EX.A-3 which is in Urdu language. The court got the writings in the plan read over and explained in Telugu as can be seen from the order. Three boundaries are visible from Ex.A-3. The fourth boundary's description is missing and the court also found that some of the letters which can be seen with regard to the fourth boundary cannot be deciphered. In the application four boundaries are mentioned which do not have any relation to Ex.A-1. The M.R.O to whom the court gave a direction to give a report as per the provisions of the Land Grabbing Act filed his report on the basis of the boundaries given in the application. He stated that the land partly falls within Sy.No.1996 and partly within 1997. The identity of the land has not been established as per the court below. It also noticed that the plan appended to Ex.A-3 does not contain the seal of the Sub-Registrar. In those facts and circumstances of the case, the appellate court came to a conclusion that the case should be remanded to a lower court to locate the land with reference

to Exs.A-1 and A-3 and both sides are to be given an opportunity to adduce further evidence.

8. Sri Bankatlal Mandhani, learned counsel for the petitioner contends vehemently that this is nothing but gathering of evidence. On the other hand, Sri V.Hari Haran, learned counsel for the respondents contends that this is a procedure by which the actual extent of the land on the ground has to be identified. This is a process of local investigation, according to the learned counsel for the respondents.

9. This court is also of the opinion that it is settled law that no Advocate Commissioner can be appointed for the purpose of gathering evidence. However, the provisions of CPC itself provide for appointment of Advocate Commissioner for the purpose of making a local investigation and a distinction has to be maintained between a case of gathering evidence and a case where the court feels that there is a need for local investigation. Local investigation is ordered to be made in the facts and circumstances of the case where the court by itself is not in a position to ascertain certain facts which in the opinion of the court are necessary for a proper and effective determination of the dispute. In the case on hand, there are boundaries given for the entire extent of the land

measuring 2744 square yards. The total extent of land under Exs.A-1 and A-2 is only 2564 square yards. The MRO's report discloses that the extent of the land is 2331 square yards in Sy.No.1997 and the remaining in Sy.No.1996. The boundaries in Ex.A-3 are not decipherable as per the findings of the lower court. In those circumstances, the appellate court came to a conclusion that it would be fit and proper to locate the lands with reference to Ex.A-1 and A-3 particularly as these documents are prior in point of time to Ex.B-3 which is of the year 1950. In view of the fact that these two documents are of the year 1944 and 1949 and the fact that some of the boundaries in the document are not decipherable, this court is of the opinion that appointment of Advocate Commissioner is necessary to ascertain the facts which are available on the ground. The mere fact that an Advocate Commissioner is appointed will not result in a decision of the case in one way or other way. The report of the Advocate Commissioner is also subjected to examination and cross examination. This court also notices that the court below in the impugned order went a step further from the appellate court's order and directed that the execution of the commission should be with the assistance of a Surveyor of the Office of Assistant Director of Survey and Land Records, Warangal and with reference

to other revenue records. It is also submitted during the course of hearing that the Commissioner has already filed a report in the court. In those circumstances, as the ascertainment of the boundaries in the opinion of the court is necessary for an effective adjudication of the dispute, this court feels that the lower court in the impugned order did not commit any order in the appointment of Advocate Commissioner. Sri V.Hari Haran, learned counsel for the respondents also relies upon a judgment of the Apex Court in appellate court *Pratibha Singh and Anr vs. Shanti Devi Prasad and Anr.*,⁽¹⁾ wherein the Supreme Court in a case at the stage of execution also felt in para.17 which reads as under:-

“When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 of the CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 of the CPC depending on the facts and circumstances of each case-which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 of the CPC by the Court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent Court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case we think it would be more appropriate to invoke Section 47 of the CPC.

(emphasis supplied)

¹ AIR 2003 SC 643

For all the above reasons, this court is of the opinion that there are no merits in the revision petition and the same is to be dismissed.

Accordingly, the Civil Revision Petition is dismissed. No costs. The interlocutory applications pending, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

03-12-2018
TSNR

