

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

CIVIL REVISION PETITION NO. 2956 OF 2013

ORDER:-

This revision is filed questioning the order, dated 03-06-2013 passed in I.A.No.414 of 2010 in O.S.No.195 of 1997 by the Junior Civil Judge, Bheemunipatnam.

2. I.A.No.414 of 2010 is an application filed under Order XXVI Rule 9 CPC to appoint an Advocate Commissioner to localize the land with the assistance of Mandal Surveyor and to note down the physical features. This application which is filed in July 2010 ultimately came to be allowed on 03-06-2013. The order is impugned in this revision petition.

3. This court has heard Sri K.Sarvabhuma Rao, learned counsel for the revision petitioner and Sri Ravi Cheemalapati, learned counsel for the respondents.

4. Sri K.Sarvabhuma Rao, learned counsel for the revision petitioner points out that the written statement filed by the defendants, who are the petitioners in I.A.No.414 of 2010, is not at all clear and that there is no clear denial that the suit schedule land is not correct. He also argues that the defendants have not taken a plea that the survey numbers are wrongly mentioned and that the correct survey numbers are not given. Therefore, he submits that in the absence of any specific plea in the written statement about the identity of the property or

about incorrectness of the survey numbers, the question of locating the land and deciding whether the land is covered by Sy.No.15/12 and 15/17 of Pandrangi Village or not will not arise. The learned counsel also points out that DWs.1 and 2 admitted about the correctness of the boundaries in the cross examination. He points out that in para.7 of the impugned order, the lower court also noted the submissions. Therefore, it is his contention that once the physical correctness of the boundaries are admitted by the defendants themselves, the alleged error in the survey number will not make any difference as boundaries prevail over the extents and also survey numbers. Therefore, it is his contention that there is no need or necessity to appoint an Advocate Commissioner. The learned counsel also submits that the whole reason why the Advocate Commissioner is sought to be appointed is spelt out in para.3. It is his contention that the revenue records can also be independently marked to decide whether the land is situated in Sy.No.15/12 and 15/17 or not. Therefore, he contends that the application was wrongly allowed.

5. On the other hand, Sri Ravi Cheemalapati, learned counsel for the respondents, argues that no prejudice will be caused to the petitioner if the Advocate Commissioner is appointed. He states that the lower court rightly came to a conclusion that appointment of an Advocate Commissioner

is necessary to completely decide the issue that is agitated by both the parties. It is also his contention that only the ground on which the application was opposed was on the delay and that after filing revision petition also the matter got delayed for the last few years.

6. This court, after hearing both the learned counsel, notices that the only ground on which the respondents filed the application is that the land is not covered by Sy.No.15/12 and 15/17. In addition, this court also notices that DWs.1 and 2 have admitted about the correctness of the boundaries in the cross-examination. If the boundaries are not in dispute, this court is of the opinion that appointment of an Advocate Commissioner is not really necessary, particularly when the prayer is only to localize the suit schedule land. The question of localizing the suit schedule land would only arise if both the parties are at issue about the identity of the property in question. In the case on hand in view of the fact that DWs.1 and 2 have admitted the correctness of the boundaries, this court is of the opinion that appointment of an Advocate Commissioner is not called for. The suit is filed for declaration of title. The burden would lie squarely upon the plaintiffs to prove their case. Therefore, merely because, the defendants stated that the suit schedule land is not correct, they cannot seek the appointment of an Advocate Commissioner, particularly

after the witnesses have admitted the correctness of the boundaries. The correct survey number and whether the suit schedule land falls within the survey number or not is a matter capable of being proved other wise than by appointing an Advocate Commissioner. Therefore, the impugned order, dated 03-06-2013, passed in I.A.No.414 of 2010 in O.S.No.195 of 1997 by the Junior Civil Judge, Bheemunipatnam is set aside.

The Civil Revision Petition is allowed. The lower court is directed to proceed with the trial without in any way being influenced what is stated in this order. No costs. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

08-10-2018
TSNR

D.V.S.S.SOMAYAJULU,J

