

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CIVIL REVISION PETITION No. 151 OF 2011**

**ORDER:**

This civil revision petition under Article 227 of the Constitution of India is filed questioning the order dated 27-09-2010 in I.A.No. 192 of 2010 in O.S.No. 102 of 2004 on the file of the Court of Junior Civil Judge at Bodhan (for short, 'the Court below').

2. The respondent-plaintiff filed I.A.No. 192 of 2010 under Order XXVI Rule 9 of the Code of Civil Procedure to appoint an advocate commissioner alleging that the suit was posted for arguments and at that stage, a doubt had arisen with regard to boundaries of the suit schedule property and identification of the property. Therefore, sought for appointment of advocate commissioner to find out the truth in the matter as no prejudice would be caused to the petitioner-defendant. The petitioner-defendant filed counter affidavit denying material allegations *inter alia* contending that the property is assigned land and its alienation is prohibited by Section 7 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977, and that no commissioner be appointed as there was no dispute with regard to boundaries and prayed to dismiss the petition.

3. Upon hearing argument of both counsel, the Court below allowed the petition by the impugned order.

4. Aggrieved thereby, the present revision is filed by the petitioner-defendant raising several contentions mainly contending that in a suit for bare injunction, commissioner cannot be appointed and that there was no dispute with regard to

any of the boundaries and prayed to set aside the order passed by the Court below allowing this revision.

5. During hearing, learned counsel for the petitioner has contended that in a suit for bare injunction, commissioner cannot be appointed and apart from that, when the boundaries are not in dispute, demarcating the boundaries of the suit plot is beyond the scope of the suit and prayed to set aside the order and placed reliance on ***Sarala Jain Vs. Sangu Gangadhar***<sup>1</sup> in support of his contention.

6. Learned counsel for the respondent has supported the order while contending that the petitioner is claiming right over the entire property which was purchased by the respondent; that the petitioner is claiming title over the property under gift deed from Rudrur Grampanchayat and that to put an end to the litigation, appointment of commissioner is necessary and prayed to confirm the order passed by the Court below. In support of his contention, learned counsel for the respondent has placed reliance on ***Subhaga and others Vs. Shobha and others***<sup>2</sup>; ***Varala Ramachandra Reddy Vs. Mekala Yadi Reddy***<sup>3</sup>; ***Salla Eswaramma Vs. C.Subba Reddy***<sup>4</sup>; and ***G.Sarojini and others Vs. K.Sri Ramamurthy and another***<sup>5</sup>.

7. The respondent admittedly filed the above suit for injunction simplicitor *i.e.* for grant of perpetual injunction restraining the defendant, its agents, workmen, servants *etc.*, from causing interference with his peaceful possession and enjoyment with respect to plot No. 4-1 in survey No. 907 admeasuring 55' x 55' x 47' x 37' equivalent to 2346 square feet situated in Rudrur Village, Varni Mandal, within the boundaries given in the schedule annexed to the plaint asserting that

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<sup>1</sup> C.R.P.No. 5837 OF 2015

<sup>2</sup> 2006 (5) SCC 466

<sup>3</sup> 2010 (4) ALD 198

<sup>4</sup> 2009 (77) AIC 647

<sup>5</sup> 1997 (5) ALT 477

the respondent became the owner by virtue of registered sale deed bearing document No. 5615 of 2002 dated 30-11-2002 for valuable consideration of Rs.31,400/-. Since then, he is in possession and enjoyment of the property as absolute owner. The petitioner herein filed written statement claiming that the schedule property was gifted to it by registered gift deed bearing document No. 6040 of 1998 dated 08-12-1998 for construction of building for location of branch library for public purpose. Thus, both the plaintiff and the defendant are claiming right over the property and the respondent is claiming ownership through one Rama Tulsamma within the boundaries mentioned in the schedule whereas the petitioner is claiming title over the property by virtue of registered gift deed executed by Rudrur Gramapanchayat. In para No. 4 of the written statement, it is asserted by the petitioner that on 18-12-2002, the respondent gave an application to it, in which the respondent did not dispute the gift deed executed in favour of the petitioner and did not raise any dispute with regard to the boundaries mentioned in the said gift deed. It is also asserted that the respondent is neither owner nor possessor of the property and it is an open plot. Therefore, the respondent is not entitled to claim any relief. The entire trial in the suit was completed and when the suit is posted for arguments, the above interlocutory application is filed with a bald allegation that there is a doubt with regard to boundaries of the suit property and identity of the property is also in doubt. The reason for seeking appointment of commissioner is doubt with regard to boundaries and identity but who raised objection as to identity of the property was not disclosed in the affidavit but it is clear from the contention raised in para No. 3 of the written statement that the petitioner is claiming same property by virtue of gift deed executed by Rudrur Gramapanchayat and even the respondent also did not dispute identity of the property and boundaries in the

application dated 18-12-2002 submitted by him to the petitioner and there is no denial of any of the boundaries in the entire written statement but suddenly both parties raised doubt about their boundaries only though they asserted that they are in possession and enjoyment of the property.

8. When a suit is filed for injunction simplicitor, the scope of the trial is limited and the Court is required to decide as to who is in lawful possession of the property within the four boundaries mentioned in the schedule annexed to the plaint and whether there is any attempt to infringe or invade the legal right of the plaintiff which gives rise to cause of action for filing the suit. The title to the parties is not required to be gone into except for limited purpose to decide lawful possession of the parties to the suit, more so when the respondent contended that he is in possession and enjoyment of the property within the four boundaries mentioned in the schedule annexed to the plaint and the petitioner also did not raise any dispute with regard to boundaries or identity of the property, except claiming that it became owner by virtue of gift deed executed by Rudrur Gramapanchayat. Therefore, there is absolutely no dispute with regard to boundaries or identity of the property. In the absence of any details in the affidavit as to who raised the dispute with regard to identity and boundaries, commissioner cannot be appointed on mere asking. Even otherwise, the relief claimed by the respondent is to demarcate the boundaries of the suit schedule property by taking measurements. This relief claimed through commissioner is beyond the scope of the suit for injunction and such relief cannot be granted. This Court in **Sarala Jain** (1<sup>st</sup> *supra*) held that commissioner cannot be appointed in a suit for injunction for demarcation of boundaries when there is no dispute and the Court is required to take into consideration the pleadings of the parties, the relief and the purpose of appointment of commissioner in an

interlocutory application. Time and again, the same issue came up for consideration before Courts and the Courts pronounced judgments on both sides holding that commissioner can be appointed in a suit for injunction where there is a serious dispute as to boundaries. In the judgments relied upon by learned counsel for the respondent, there is a serious dispute with regard to boundaries but in the present facts of the case, the petitioner did not raise any specific boundary dispute or identity. Thus, there is absolutely no dispute with regard to identity of the property and so also boundaries of the property. In such case, question of appointing advocate commissioner for demarcation of the boundaries does not arise, more particularly when the respondent himself claiming that he is in possession and enjoyment of the property within the four boundaries mentioned in the schedule annexed to the plaint. Hence, appointment of advocate commissioner in the facts and circumstances of the present case would not arise.

9. For the foregoing reasons, the impugned order is liable to be set aside and the same is accordingly set aside. Taking into consideration that the suit is of the year 2004, the Court below is directed to dispose of the suit within three months from the date of receipt of a copy of this order uninfluenced by the observations made hereinabove.

10. The civil revision petition is accordingly allowed. Pending miscellaneous petitions, if any, shall stand closed in consequence.

Date: 21-02-2018.  
JSK

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**M.SATYANARAYANA MURTHY, J.**