

HON'BLE SRI JUSTICE P.NAVEEN RAO
CIVIL REVISION PETITION NOS.3565 & 3571 OF 2018

Date: 13.07.2018

C.R.P.No. 3565 of 2018:

Between:

Yengala Swaroopa, w/o. Mruthyunjayam, Aged 54 years,
Occu: Household, r/o. H.No.10-6-59, Girmajipet,
Warangal.

.... Petitioner/petitioner/
Plaintiff

And

Veldi Chakradhar, s/o. Sambaiah, Aged 26 years,
Occu: Business, R/o. H.No.12-8-298, Sainagar colony,
Hunter Road, Hanumakonda, Warangal and others.

.... Respondents/respondents/
defendants



The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO

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COMMON ORDER:

Petitioner is plaintiff in O.S.No.425 of 2010 on the file of II Additional Junior Civil Judge, Warangal. Evidence on both sides was closed and suit is coming up for arguments. At this stage, she filed two interlocutory applications. I.A.No.307 of 2018 is filed under Section 151 of CPC praying to reopen the case to lead further evidence on behalf of plaintiff. Petitioner filed I.A.No.308 of 2018 under Order XXVI Rule 9 of CPC to appoint Advocate-Commissioner to measure the land in survey No.241 of Enumamula village in Hanumakonda Mandal. Both I.As were rejected by the Trial Court, against which these two revisions are filed.

2. As noted by the Trial Court, plaintiff evidence was closed on 10.10.2014. When the matter was coming up for evidence of defendants, interlocutory application was filed to reopen her evidence and also filed few documents, which application was allowed, PW.1 was recalled and was again cross-examined at length. Defendant reported no evidence and thus, the matter was coming up for arguments. Petitioner now pleads that person, by name, R.Srinivas also purchased the property from same vendor; earlier his whereabouts were not known and now he is available and willing to depose and, therefore, prays to reopen the evidence on behalf of plaintiff. The Trial Court disbelieved statement of petitioner that whereabouts of Mr R.Srinivas were not known and observed that there was no pleading, all along, about this person purchasing the property from same vendor. The trial Court noticed

that there was no plausible explanation how petitioner now learnt about said person. The Trial Court also noticed that schedule of Ex.A1 does not disclose so called person owning property, bounded by scheduled property, claimed by the plaintiff. Having regard to the history of recording of evidence and that the suit is coming up for arguments, the Trial Court was not inclined to entertain the application to reopen the evidence.

3. As seen from the record, the plea of the plaintiff is that the defendants are stranger to the suit schedule property, they did not possess any right to the property and under the guise of fabricated and brought up documents defendants deceitfully started laying claim over the suit schedule property and occupied the suit schedule property. In other words, claim of the plaintiff is, defendants are in illegal occupation of property belonging to her. She therefore prayed to direct defendant No.1 to deliver vacant possession of suit schedule property; to declare the plaintiff is absolute owner and in possession of schedule property and also sought further prayer as reflected in relief (c). The issue for consideration in the suit is whether the subject property belongs to plaintiff and whether defendant No.1 is in illegal occupation of the said property. In the facts of this case, I therefore see no error committed by the Trial Court refusing to reopen evidence warranting interference.

4. As noted above, the issue for consideration in the suit is whether defendant No.1 is in illegal occupation of land belonging to plaintiff. In the application to appoint Advocate-Commissioner, plaintiff alleges that land to an extent of 399 square yards out of

660 square yards purchased by her in Sy.No.241 is in illegal occupation by defendant No.1. However, plaintiff now seeks conducting of survey of entire survey No.241. No possible reason is assigned as to why survey sought for the entire extent. As fairly submitted by learned counsel for petitioner, the total extent of land in survey No.241 is approximately five acres and there are several other owners. According to learned counsel, several constructions have also come up. Thus, even assuming that the survey is required, conducting of survey for the entire extent of land would have impact on the claims of other owners of lands and in their absence no such direction can be issued. As noted above issue for consideration in the suit is only with reference to small extent of land allegedly belonging to plaintiff and alleged to have been occupied by the defendant No.1 and, therefore, order to conduct survey for the entire extent of land, more so when other owners of the land are not parties to the suit, cannot be issued.

5. Further, even according to plaintiff, her property is clearly demarcated and defendant No.1 encroached into that property. As rightly observed by the Trial Court the burden is on the plaintiff to show the extent of land owned by her and the alleged encroachment by the defendants. It is for the plaintiff to prove that the suit schedule property to an extent of 339 square yards belonging to her is encroached and made part of 2100 square yards, on which petroleum retail outlet was established by the defendant No.1. The Trial Court noticed that plaintiff is not pleaded on which side of her property encroached and no measurements of the land encroached are furnished. The Trial Court has also noted the deposition of plaintiff on the issue. By

assigning reasons in support of the order, the I.A. was dismissed.

In the facts of this case, I do not see any error in the decision of Trial Court refusing to appoint Advocate-Commissioner warranting interference.

6. Accordingly, Civil Revision Petitions are dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 13.07.2018

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