

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REIVISION PETITION No.4568 OF 2018

ORDER:

This civil revision petition is filed by the petitioner/defendant aggrieved by the order dated 29.09.2016 in I.A.No.310 of 2015 in O.S.No.76 of 2015 on the file of Principal Junior Civil Judge, Devarakonda, Nalgonda District, dismissing the petition filed by the petitioner to appoint advocate commissioner to localize the suit property and note down physical features and boundaries of the suit schedule property with the help of a government surveyor.

2. Notice served on respondent, but, there is no representation. Hence, heard learned counsel for petitioner.

3. O.S.No.76 of 2015 is filed by the respondent/plaintiff seeking perpetual decree against petitioner/defendant in respect of land bearing S.No.323/E7, an extent of Acres 0.04 guntas situated in Bollanpally village of Dindi, Nalgonda District, with the specific boundaries mentioned in the plaint. The case of the respondent/plaintiff is that he is absolute owner and pattedar of the plaint schedule dry land, which he got in a partition among his brothers and defendant has nothing to do with the same. While so, the case of the defendant is that he is the absolute owner of the suit schedule property which he got by way of settlement with

transfer deed from his elder brother vide document No.728/2015, dated 30.01.2015 and the suit schedule property actually is in an extent of 108 square yards covered by S.No.325, bearing H.No.3-20, situated at Pedda Thanda, Bollenapalli Village, Gundlapally (Dindi) Mandal, Nalgonda District, with specific boundaries. The defendant's elder brother purchased said suit schedule property from one V.Anjaneya Prasad, vide document dated 21.08.1970 as per the Gram Panchayat record covered by document No.01/2015 dated 29.01.2015. The elder brother of the defendant who purchased said property later transferred in the name of the defendant. It is the specific case of the petitioner/defendant that plaintiff without having any valid right, title or possession over the suit schedule property filed the suit by showing the wrong boundaries and also wrong survey number.

4. Therefore, he filed I.A.No.310 of 2015 for appointment of an advocate commissioner averring that the plaintiff filed the suit and obtained *ad interim* injunction against him without showing correct boundaries. According to him, in suit schedule property, except the house of petitioner, there is no other land in that vicinity and in the guise of the injunction, the plaintiff was trying to dismantle the structures of the house. Thus, he sought for appointment of an advocate commissioner.

5. The respondent/plaintiff filed counter and opposed the petition contending that he showed the correct boundaries in suit schedule and there was no house located in the suit schedule property which belonged to the defendant. He further contended that the petitioner/defendant filed another suit O.S.No.77 of 2015 with false boundaries against the respondent/plaintiff and some others. He thus prayed to dismiss the petition.

6. The trial court observed that a suit for perpetual injunction will be basically filed on the basis of possession and threat allegedly caused by the defendant to such possession and therefore, the appointment of commissioner at the initial stage would amount to gathering evidence. The trial court further observed that as per plaint it contains specific boundaries and the plaintiff claims title and possession in respect of specific property and plaintiff has to establish his title and his possession in respect of the property with specific boundaries by adducing evidence and therefore, at this stage, it is not amenable to appoint commissioner. On all these observations, the trial court dismissed the petition. Hence, the civil revision petition.

7. Heard counsel for petitioner.

8. The submission of the learned counsel for petitioner is that the boundaries given in the suit schedule property are

not correct and the plaintiff has not shown the clear picture therein and the plaint schedule property is not a vacant site as contended by the plaintiff and on the otherhand, the plaint schedule property is in an extent of 108 square yards covered by Survey No.325 with house No.320 and the house constructed by the defendant is located therein and the plaintiff with the aid of interim injunction, is trying to demolish the said property and infact, he made attempts to demolish the property and the defendant gave report to police, which was registered as Crime No.24 of 2016, of Dindi police station for the offences under Section 447, 427, 323, 504, 188 r/w 34 IPC and the police after investigation filed charge sheet against the respondent/plaintiff (A4) and three others on the file of Judicial First Class Magistrate, Devarakaonda and case was taken cognizance and registered as C.C.No.292 of 2017 and in view of the fact that the respondent/plaintiff has made attempts to demolish the structures existing on the suit schedule property, it is imperative and eminent for appointment of a Commissioner to localize the suit schedule property and note the physical features with the assistance of the surveyor. He placed reliance on the decision of this Court in ***N.Savitramma and another v. B.Changa Reddy***¹, to buttres his contention that in cases whether there is a threat of obliteration of physical features of the suit property, the court can appoint a

¹ 1998 (1) ALT 353

commissioner even before the commencement of the trial. He, thus prayed to allow the civil revision petition.

9. As can be seen from the written statement and the affidavit in I.A.No.310 of 2015, it is the specific contention of the petitioner/defendant that the plaintiff has not given the correct particulars of the suit schedule property and that the suit property is not a vacant land. But, on suit schedule land, the house of the defendant is existing and the plaintiff has tried to demolish the same under the guise of injunction and against the said highhanded acts of the plaintiff, the petitioner/defendant has already lodged a report and the police after investigation filed charge sheet against the respondent/plaintiff and others. The contention of the petitioner/defendant is supported by copy of the FIR and charge sheet filed by the police of PS Dindi in Crime No.24 of 2016. Thus, there is force in the submission of the petitioner/defendant that there is a threat of obliteration of the physical features of the suit property. In **Savitramma's case (supra)**, learned judge of this Court has observed that the court can appoint an advocate commissioner to note physical features of the land and locate the same before the evidence is led where there is a threat of obliteration of the physical features. In the instant case also, as noted supra, the FIR and charge sheet reveals that an attempt was made by the respondent/plaintiff and his men to demolish the

structures put up by the petitioner/defendant. Therefore, there is any amount of force in the submission of the learned counsel for petitioner.

10. In the result, this civil revision is allowed, setting aside the order in I.A.No.310 of 2015 and consequently, I.A.No.310 of 2015 is allowed and the trial court is directed to appoint an advocate commissioner to note the physical features and boundaries of the suit schedule property with the help of a government surveyor and to file his report. The entire exercise shall be completed within two months from the date of receipt of copy of this order.

As a sequel, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

07.09.2018
SS

U.DURGA PRASAD RAO, J