

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.5248 of 2018

ORDER:

The unsuccessful plaintiffs preferred this Civil Revision Petition, under Article 227 of the Constitution of India, assailing the order and decretal order, dated 04.06.2018, of the learned Principal Junior Civil Judge, Kovur of SPSR Nellore District, passed in I.A.No.673 of 2017 in O.S.No.153 of 2017 filed under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908.

1.1 The said application was filed requesting to appoint an Advocate Commissioner to note, with the assistance of the Mandal Surveyor, Buchireddipalem Mandal, the existence of 'XY' channel along with 'ABCD' canal/channel, shown in the rough sketch annexed to the plaint, and also the physical features of the suit/subject properties and file a report.

2. I have heard the submissions of the learned counsel for the petitioners/plaintiffs 1 to 4 ('the plaintiffs, for brevity), and of the learned Government Pleader for Arbitration, appearing for the respondents 1 and 2/defendants ('the defendants', for brevity). The 3rd respondent/5th plaintiff is stated to be not a necessary party. I have perused the material record.

3. To begin with, it is to be noted that the plaintiffs filed the suit against the defendants for perpetual injunction restraining them from in any manner interfering with or closing the existing 'XY' channel,

(shown in the plaint plan) which is situated in Sy.Nos.272-4, 275-1, 275-2, 275-3 and 276 of Nagamambapuram Village, Buchireddipalem Mandal, and for costs. The 2nd defendant – Tahasildar filed a written statement. The same was adopted by the 1st defendant – District Collector by filing a memo. Along with the suit, the plaintiffs filed the aforesaid Interlocutory Application seeking the above-said relief. The same was resisted by the defendants by filing a counter. On merits, and by the orders impugned in this revision, the trial Court dismissed the said application of the plaintiffs.

4. The case of the plaintiffs and the submissions made on their behalf in support of their aforesaid request, in brief, are as follows:

‘One P. Ramachandra Reddy is the son of Ramana Reddy. He filed a declaration under the land ceiling laws and surrendered surplus land of an extent of Ac.3.96 cents in Sy.No.275/1 in the subject village. The said land was allotted to landless poor persons for being put to use as house sites. The beneficiaries constructed houses in their respective house sites. ‘XY’ channel is branching off from Old Yellayapalem canal shown as ‘ABCD’ in the plaint. The said ‘XY’ channel in Sy.Nos.272, 275 and 276 was formed about 60 years ago. It is intended for cultivation of the lands in the locality. The plaintiffs 1 to 5 own the lands of the extents of Ac.5.28 cents in Sy.No.277/1, Ac.1.81 cents in Sy.No.276-C, Ac.0.62 cents in Sy.No.285-A, Ac.1.49 cents in Sy.Nos.276-B and 276-C and Ac.0.45 cents in Sy.No.276-C respectively. The ryots possessing lands in Sy.Nos.276, 277, 281, 283,

284 and 285 formed 'XY' channel in their patta lands, about 60 years ago, for cultivation of their lands. In the subsequent survey operations, a reference to the said channel was also made in the records by the Revenue Officials. The total extent of land in Sy.No.275/1 is Ac.4.89 cents; and out of it, Ac.3.96 cents was surrendered to the Government, as stated above. In the said extent, assignees constructed houses. The land to an extent of Ac.0.06 cents was allotted for forming a channel. The remaining land of Ac.0.87 cents in Sy.No.275/1 is patta land, over which the Government admittedly has no possession. The 'XY' channel is the only source of irrigation of the lands of the plaintiffs and others; except the said channel, there is no other source for supply of water to the lands. The plaintiffs and their predecessors in interest are cultivating their respective lands by drawing water through the said channel. While so, the 2nd defendant- Tahasildar, instigated by local leaders, is now trying to encroach upon the remaining patta land of Ac.0.87 cents in Sy.No.275/1, which is excluded from the ceiling proceedings, and is trying to assign it to persons of weaker sections. Thus, the defendants are making efforts to close 'XY' channel and assign the said land to some beneficiaries. The defendants 1 and 2 have no manner of right to do so. They have no right to assign the channel poramboke, as per Law and the Board Standing Orders. As there was no reply to the notice nor was compliance, the plaintiffs are constrained to file the suit. Though a representation was given for demarcation and identification of the Government land, no action has been taken.

Without identification of the Government land, efforts are being made to grab the remaining patta land of Ac.0.87 cents in Sy.No.275/1 in the subject village. The irrigation channel exists in the said land. Hence, it is just and necessary to appoint an Advocate Commissioner for the afore-stated purpose desired by the plaintiffs’.

5. The case of the defendants and the submissions made on their behalf, in brief, are as follows:

‘P. Ramachandra Reddy surrendered surplus land of an extent of Ac.3.96 cents in Sy.No.275/1 of Nagamambapuram Village is a fact. A major portion of the said land was allotted as house sites to the landless poor persons; and, the beneficiaries have constructed houses in their respective house sites. It is also a fact that the plan marked ‘ABCD’ canal is in existence. However, it is false to say that ‘XY’ channel in Sy.Nos.272, 275 and 276 was formed about 60 years ago and that the ryots possessing lands in Sy.Nos.276, 277, 281, 283, 284 and 285 formed the said channel and that it is the only source for supply of water to the lands of the plaintiffs and others. It is false to say that an extent of Ac.0.06 cents was allotted for formation of a channel. The said Ac.0.06 cents in Sy.No.275/2 is classified as channel poramboke in Re-Settlement Register and its sub-division is shown in Field Measurement Book. It is a fact that the remaining Ac.0.87 cents in Sy.No.275/1 is a patta land. Over the said land, the Government has no right or possession is also a fact. The ‘XY’ channel was never in existence. The allegations that the patta land of

Ac.0.87 cents in Sy.No.275/1, which is excluded from the ceiling proceedings under the Ceiling laws, is being attempted to be grabbed and that attempts are being made to close 'XY' channel are all false allegations invented for the purpose of the suit. The plaintiffs got issued a notice to the Tahasildar – 2nd defendant with a request not to interfere with the private property. Since there is no 'XY' channel, the question of interfering with the same or making attempts to close the same does not arise for consideration. The said allegations are illusory. It is a fact that the extent of patta land in Sy.No.275/1 is Ac.4.83 cents; and that Ac.0.06 cents in Sy.No.275/2 is a canal poramboke. Out of total extent of Ac.4.83 cents in Sy.No.275/1, an extent of Ac.3.96 cents was declared as surplus under the Land Ceiling Laws and the same was surrendered to the Government by one P. Ramachandra Reddy; and, in turn, the Government distributed the same as house sites to the persons belonging to weaker sections and the balance land of Ac.0.87 cents in the said survey number is a patta land and it is in the possession of private persons, as per the sketch filed along with the written statement. The 'ABCD' canal passes through Sy.Nos.274/4, 275/2 and 274/2 of the subject village, but not through Sy.No.275/1 or 276. Sy.No.275/3 is not in existence. All the fields through which the canal passes have been sub-divided and are also classified as canal poramboke lands. The plaintiffs are trying to misinterpret the canal poramboke of Ac.06 cents, which is in Sy.No.275/2, as part of Sy.No.275/1 and the said representation is far from truth. An attempt was made by the plaintiffs to excavate a canal

across the surplus land in Sy.No.275/1 to irrigate the dry lands in Sy.No.276. The said action was resisted, as the plaintiffs have no right to encroach into surplus land, which is the Government land. No attempt was ever made to encroach upon the balance patta land of Ac.0.87 cents in Sy.No.275/1 of the subject village, which is a private patta land. There is no canal in Sy.No.275/1 as alleged by the plaintiffs. The canal poramboke is intact without any disturbance. Hence, the Commissioner need not be appointed’.

6. At the hearing, learned counsel for the plaintiffs, while reiterating the case of the plaintiffs, which is excerpted supra, contended as follows: ‘In a case of this nature, where the contention of the plaintiffs is that ‘XY’ channel, which is in dispute, is in existence since 60 years and that it is the only source of water for their lands, and when the said facts stated by them are denied by the defendants/Government, the trial Court ought to have appointed an Advocate Commissioner to note down the physical features of the subject properties and of the ‘XY’ channel, if any, in existence, as obtaining such a report is necessary for effective adjudication of the issues involved in the *lis*; the trial Court ought to have seen that when one party is asserting and the other party is denying the existence of the channel in question, any amount of oral evidence would be of no avail, and that it is necessary to appoint an Advocate Commissioner for noting down the physical features and for identifying the channel, if any, on ground, with the help of a Mandal Surveyor. The

identification and demarcation of the Government land/poramboke & the private lands on ground and also the identification of the survey number of the land in which the canal is situated is necessary, as such an evidence would be of immense assistance to the trial Court in appreciating the oral evidence that would be brought on record during the course of trial. The observation of the trial Court to the effect that the suit is for perpetual injunction and that for collection of evidence, a Commissioner cannot be appointed, in view of the denial of the existence of any such channel by the defendants, is an erroneous observation; and, such an approach of the trial Court is unwarranted. The appointment of the Commissioner for noting down the physical features & the existence of the channel in dispute and for identifying & demarcating the Government land/canal poramboke and private patta land, with reference to survey numbers, in the facts and circumstances of the case, does not amount to collection of evidence by any stretch of imagination. In fact, in the counter, there is only a reiteration of the defence, but it is not stated as to why the Commissioner's appointment is not necessary in the facts and circumstances of the case.'

7. Per contra, the learned Government Pleader for Arbitration, while reiterating the case of the defendants, strongly contended as follows: 'There is no 'XY' channel; the contention to the contra of the plaintiffs is false. There is only a canal poramboke of Ac.0.06 cents in Sy.No.275/2; there is no Sy.No.275/3 in existence; the Government

are not disputing that Ac.0.87 cents in Sy.No.275/1, which is not included in the surrendered ceiling land, is a private patta land; the Government's case is that in Sy.No.275/1, the land of an extent of Ac.3.96 cents out of Ac.4.83 cents, is the surplus land and that a portion of Ac.3.96 cents is distributed to the people belonging to weaker sections for use as house sites and that the beneficiaries had constructed houses; the attempt of the plaintiffs to create 'XY' channel in the Government land was resisted. Hence, the suit is filed with invented allegations. Therefore, there is no need to appoint a Commissioner, as rightly held by the trial Court.'

8. I have given my earnest consideration to the facts and submissions.

9. In the case on hand, the existence of canal poramboke and the existence of 'ABCD' canal is not in dispute. The case of the plaintiffs is that the disputed 'XY' channel is a branch of ABCD canal, the existence of which is not in dispute. According to the plaintiffs, the 'XY' channel was formed 60 years ago in sy.nos.272, 275 and 276. By now, there is a sub-division of the survey numbers. The defendants contended in the written statement that the contention that the irrigation channel 'XY' is in Sy.No.275/1 is false and that no such channel is in existence. The existence of certain sub-division survey numbers is also disputed by the Government. Part of the land in Sy.No.275/1 was surrendered being surplus land under the Ceiling Laws. The principal issue to be determined in the suit is as to the

existence or otherwise of 'XY' channel shown in the plaint plan, which according to the plaintiffs is connected to 'ABCD' canal, which is admittedly in existence. The plaintiffs also contend that XY channel is a branch of 'ABCD' canal and that it is the only source for supply of water for cultivation of the lands of the plaintiffs situated in the locality and that except the said channel, there is no other source for supply of water to the plaintiffs' lands. In the plaint, the plaintiffs alleged that the cause of action arose when a channel in Sy.Nos.272, 275 and 276 was formed and when hectic efforts were made to close the same and assign the land covered by the said channel, without any manner of right. In the context of the issue that requires to be adjudicated in the suit, as rightly contended, mere oral assertions in line with the pleadings of the parties would be of no avail. It is trite to note that the total extent of land in Sy.no.275/1 is Ac.4.89 cents. Out of it, Ac.3.96 cents is the surplus land. Hence, it was surrendered to the Government under the Ceiling Laws. The remaining Ac.0.87 cents is admittedly a private patta land. Over the said extent of land, Government are also not claiming any right or possession. Ac.0.06 cents is admittedly canal poramboke. Plaintiffs submit that the respondents are making hectic efforts to assign the lands and that therefore, attempts are being made to close 'XY' channel. In view of the rival contentions, the appointment of a Commissioner for identification and demarcation of the subject private lands, the Government land and the canal poramboke on ground, with reference to survey numbers, and for noting down the physical features, as

desired by the plaintiffs, with the help of a Mandal Surveyor, is necessary, in the considered view of this Court, to resolve the dispute and give a quietus. If a Commissioner visits the locality and does the necessary work and files a report with a plan, the same would serve as an assured piece of evidence and will be of help to the trial Court in appreciating the oral and documentary evidence that may be adduced during the course of trial and in arriving at a just decision in the suit. Generally, when the issue relates to the existence or otherwise of an irrigation channel, the Courts would be inclined to appoint a Commissioner to visit the properties in question and note down the existence or otherwise of the channel or its traces, if any, and also other physical features, as such a course would sub-serve the ends of justice.

10. On the above analysis, this Court is of the view that this is a fit case for appointment of an Advocate Commissioner for the purpose desired by the plaintiffs and that appointment of an advocate Commissioner would not only sub-serve the ends of justice but also would make available to the trial Court one more assured piece of evidence, which will be of immense help to it in appreciating the other evidence that may be brought on record and in arriving at a just decision on the issues involved in the suit. For the reasons afore-stated, this Court finds that the impugned order of the trial Court is liable to be set aside and that the revision of the plaintiffs deserves to be allowed.

11. In the result, the Civil Revision Petition is allowed and the impugned order is set aside. Consequently I.A.No.673 of 2017 in O.S.No.153 of 2017 is allowed. The trial Court is directed to appoint an Advocate Commissioner from the panel of Advocates being maintained by it, for the purpose desired by the plaintiffs. The trial Court shall reserve liberty to the parties to serve work memoranda on the Commissioner and direct the Commissioner to answer the points, within the scope of the warrant, in the work memos, if any, served by the parties.

There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.



M.SEETHARAMA MURTI, J

29.10.2018

v v