

THE HON'BLE SRI JUSTICE N.BALAYOGI

C.R.P. No.7244 of 2017

ORDER:

This revision under Article 227 of constitution of India is filed seeking to set aside the order dated 22.11.2017 dismissing I.A.No.962 of 2017 in O.S.No.90 of 2017 on the file of Principal Junior Civil Judge, Nizamabad.

2. The petitioner herein is the plaintiff before the trial Court. The contention of the petitioner is that he filed the suit for permanent injunction in respect of land measuring Ac.0.15 ½ guntas in Sy.No.125/A, situated near Kanteshwar Sivar, Nizamabad. It is contended that the defendant-respondent herein filed counter and written statement stating that the suit schedule property was donated to it by the owners in the year 1995 and also stated that there is no land in Sy.No.125, but has not explained the discrepancy either in the counter or in the written statement and hence, the order of the Court below is illegal. It is further contended that the finding of the trial Court that already survey was conducted in pursuance of the orders of this Court and again it cannot be done for the same purpose is illegal and bad. It is contended that if a Commissioner is appointed to survey the land with the assistance of Survey and land records to fix the boundaries of the suit schedule property, no prejudice would be caused to the respondent herein.

3. Per contra, the respondent herein contended that an Advocate-Commissioner cannot be appointed for the same purpose and the order under challenge does not suffer from any illegalities.

4. Now the point for consideration is:-

‘Whether the order of the trial Court in I.A.No.962 of 2017 in O.S.No.90 of 2017 suffers with any legal infirmities warranting interference by this Court?’

5. The learned counsel for the petitioner mainly contended that even though an earlier Advocate-Commissioner surveyed the land in the presence of Tahsildar and Panchas, if the Commissioner is appointed again to demarcate the suit schedule land with the assistance of Survey and land records, no prejudice will be caused to the respondent herein.

6. A perusal of the record goes to suggest that the petitioner filed the suit in O.S.No.90 of 2017 seeking permanent injunction restraining the respondent from interfering with peaceful possession and enjoyment of the petitioner over the suit schedule property, which was allegedly purchased by the petitioner under a registered sale deed dated 08.12.2015 from the original owners. As seen from the affidavit filed in support of the petition in I.A.No.962 of 2017, the petitioner clearly stated in the affidavit that as the survey authorities were reluctant to survey the suit land, he obtained directions from this Court in W.P.No.19484 of 2016 and this Court by order dated 21.6.2016 directed to survey the suit land. By virtue of the said orders, the revenue authorities surveyed the suit schedule land on 15.10.2016 in the presence of panchas and fixed the boundaries with demarcation and delivered vacant possession to the petitioner. The only claim of the petitioner for reappointment of the commissioner is that all the documents with record of the survey conducted by the surveyor in compliance of the directions of

this Court were not furnished to him. But whereas in the grounds of revision, the petitioner stated at para 4 as under:

“4.....and this Honourable court disposed of the said Writ Petition, in pursuance of the same the revenue authorities surveyed the land in Sy.No.125/A on 15-10-2016 in the presence of panchas and panchanama copy dated 22.2.2017 was served to the petitioner/plaintiff, the said report clearly shows that the revenue officials surveyed the land by fixing the boundary stones and vacant possession is given to the petitioner/plaintiff in the presence of the panchas, the Tahsildar also attested the panchanama copy and the Court below without looking those documents dismissed the application on the ground that the petitioner/plaintiff cannot seek again to appointment of Advocate Commissioner for the same purpose which task is already completed with the direction of the Honourable Court....”

As seen from the above, it is clear that the copy of the panchanama dated 22.2.2017 in pursuance of the survey conducted by the revenue authorities on 15.10.2016 was served on the petitioner.

7. The above facts clearly goes to suggest that the petitioner is claiming dry open land in Sy.No.125/A measuring Ac.0.15 ½ guntas, situated in Kanteswara Sivaru, Nizamabad. It is the contention of the respondent that the said land was gifted to it by the owners in the year 1995.

8. The material available on record clearly goes to suggest that the revenue authorities after duly issuing notice dated 6.10.2016, surveyed the land in dispute on 15.10.2016 in the presence of panchas and the panchanama copy dated 22.2.2017 was served on the petitioner. The surveyor fixed the boundaries of the land by fixing stones and delivered vacant possession to the petitioner in the presence of panchas and the Tahsildar also attested the said panchanama copy. The surveyor also furnished the location

sketch, tonch map to the petitioner. In view of the same, I do not find any error or irregularity in the order of the trial Court. The revision is devoid of merits and the same is liable to be dismissed.

9. In the result, the Civil Revision Petition is dismissed while confirming the order of the Principal Junior Civil Judge at Nizamabad dated 22.11.2017 in I.A.No.962 of 2017 in O.S.No.90 of 2017. No costs.

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

23rd March, 2018

Tsr



JUSTICE N.BALAYOGI