

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No.7141 OF 2017

Dated:18.01.2018

Between:

Kolipaka Sambaiah, S/o. Venkatamallu,
Aged about 58 years, Occ: Agriculture,
R/o.Balvanthapur Village, Duggondi
Mandal, Warangal District

.. Petitioner

And

P. Srinivasa Rao, S/o. Not known,
Aged about 45 years, Occ: Police
Constable, R/o.H.No.1-9-620/2,
Julywada, Hanamkonda, Warangal
District and another

.. Respondents



The Court made the following:

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ORDER:

Petitioner herein is plaintiff in O.S.No.1331 of 2011 on the file of V Additional Junior Civil Judge, Warangal. Praying to grant injunction against the defendants alleging that the defendants are interfering with the suit schedule property, the said suit is filed. The suit schedule property is the land to an extent of 605 sq. yards in Survey No.124/A of Gorrekunta Village bounded on the East 100 feet wide road, West 30 feet wide road, North 40 feet wide road and South open land of others. The suit was hotly contested. According to the respondents/defendants, they are not encroaching into the land of the petitioner as alleged; their land is in Survey No.123/A and no land stands in the name of Akula Narasimha Rao and Akula Prahlad Rao in Survey No.124. It appears, the trial was completed and the case is coming up for advancing oral arguments. At that stage, plaintiff filed I.A.No.1524 of 2017 under Order XXVI Rule 9 read with Section 151 C.P.C. to appoint an advocate commissioner to demarcate the land in Survey No.124. The said petition was dismissed by order dated 24.10.2017, against which this Civil Revision Petition is filed.

2. Learned counsel for the petitioner submits that as the defendants are opposing the claim of the petitioner and contending that their land is in Survey No.123/A, it is necessary to demarcate the land of the petitioner in Survey No.124 and therefore, it is necessary to appoint an advocate commissioner to localize the

properties of the petitioner as described in the schedule appended to the plaint.

3. The trial Court while considering the petition held that as the suit was instituted by the petitioner alleging interference by the defendants and when the petitioner/plaintiff claiming that the property is located in Survey No.124/A, the burden is on the petitioner/plaintiff to prove the existence of property claimed by him. The trial Court observed that the claim made by the petitioner in the I.A. is nothing but collection of information and will not help in adjudicating the dispute in suit.

4. On a bare perusal of the averments made in support of the I.A., it is clear that according to the petitioner the land described in the schedule appended to the suit was purchased by him in the year 2011 and at the time of purchase, survey was conducted and the vendors also conducted survey and demarcated the land and possession was delivered to the petitioner. Thereafter, he is in peaceful possession and enjoyment. While so, since the respondents claimed that their land is in Survey No.123/A, petitioner averred in the affidavit filed in support of the I.A. that survey should be conducted in Survey No.124 and sought for directions.

5. As can be seen from the rival claims that the land is stated to be falling in two different survey numbers. Even assuming that what is contended by the petitioner is valid and for proper adjudication of the claim in the suit, a survey is required to be conducted, no useful purpose would be served in conducting survey and demarcation of the land in Survey No.124, as claimed

by the petitioner, without conducting survey and demarcation of the land in Survey No.123 also, whereas that was not the prayer sought.

6. As rightly pointed out by the trial Court, in a suit for injunction, the burden is on the plaintiff to establish that he is in possession and there is no boundary dispute or dispute regarding the existence of a plot as is now contended respectfully by the plaintiff and the defendants. Thus, in the guise of localizing the property, the petitioner is nothing but trying to collect the evidence and the same is not permissible. Furthermore, suit is of the year 2011 and the petition is not filed after commencement of trial, but it was filed when the case was at the stage of oral submissions. Therefore, I do not see any error in the discretion exercised by the trial Court in dismissing the petition.

7. The Civil Revision Petition is accordingly dismissed. There shall be no order as to costs.

P. NAVEEN RAO, J

Date:18.01.2018

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