

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6579 OF 2017

ORDER:

1) The present Civil Revision Petition is filed by the petitioner/ plaintiff under Article 227 of the Constitution of India, aggrieved by the order, dated 26.10.2017 passed in I.A.No.1884 of 2016 in O.S.No.223 of 2011 on the file of the Principal Junior Civil Judge, Rajamahendravaram, wherein and whereunder an application filed under Order 26 Rule 9 of C.P.C. seeking appointment of an advocate-commissioner to localize the properties of both parties shown in their respective title deeds and also localize the schedule property with the assistance of Town Surveyor and to note down the physical features of the plaint schedule property, was dismissed.

2) The facts in issue are as under:

The petitioner/ plaintiff filed O.S.No.223 of 2011 seeking the following reliefs.

- a) For declaration of his title to "ABCD" portion of plaint sketch and for possession of the plaint schedule vacant site after removing the stair case etc., unauthorisedly raised and evicting the defendants therefrom.
- b) Granting mandatory injunction directing removal of projected "ABCD" portion of plaint sketch.
- c) For future damages for use and occupation of plaint schedule property.

3) In the said suit the petitioner himself got examined as PW.1 and when the suit is posted for cross-examination of PW.1, the petitioner/plaintiff filed I.A.No.1884 of 2016 seeking appointment of an advocate-commissioner to localize the properties of both parties shown in their respective title deeds, to localize the schedule property with the assistance of Town Surveyor and to note down the physical features of the plaint schedule property with the assistance of the Surveyor.

4) A counter came to be filed by the defendants stating that the first defendant constructed a building in the year 1995 as per the approved plan and at the time of construction he left out a small lane towards East as per vastu and constructed a cement stair case to reach the open terrace. It is also stated that previously the petitioner filed I.A.No.2275 of 2012 seeking appointment of an advocate-commissioner, which was dismissed. Subsequently in the year 2014 also the petitioner filed I.A.No.1248 of 2014 seeking the same relief, which was not pressed by the petitioner. Now, the petitioner/plaintiff filed the present application seeking the same relief only to drag on the proceedings.

5) After considering the rival submissions made, the trial Court dismissed the application. Challenging the same, the present Civil Revision Petition is filed.

6) The learned counsel for the petitioner/plaintiff would submit that the 1st defendant started constructions and stairs by

encroaching the land of the petitioner, as such he filed the suit seeking declaration of his title and also for eviction. It is also stated that while dismissing I.A.No.2275 of 2012, the petitioner was given liberty to file a fresh application after the commencement of evidence. Hence, the petitioner filed the present petition seeking appointment of an advocate-commissioner.

7) It is to be noted that the suit is posted for cross-examination of PW.1. In the year 2012, while dismissing I.A.No.2275 of 2012, the trial Court gave a finding that the petitioner is at liberty to file fresh application after the commencement of evidence. Now the suit is posted for cross-examination of PW.1.

8) In *Bandaru Mutyalu and another v. Palli Appalaraju*¹ a learned Single of this Court while dealing with the aspect of appointment of an advocate-commissioner held as under:

“Where there is controversy as to identification, location or measurement of the land, local investigation should be done at an early stage so that the parties are aware of the report of the Commissioner and go to trial prepared. The party against whom the report may have gone may choose to adduce evidence in rebuttal.”

9) It is to be noted that the suit is filed for declaration of title and eviction of the respondents/defendants and also for mandatory injunction. The petitioner/plaintiff contends that the 1st defendant constructed stair case in the month of August, 2010

¹ (2013) 6 ALT 26

by encroaching upon his land, where as the respondents would contend that in the year 1995 itself the 1st defendant constructed a house and also stair case in the land purchased by him.

10) In *Haryana Wakf Board v. Shanti Sarup and others*² the Apex Court held that in a case where demarcation of the disputed land is warranted, it would be appropriate for the Court to direct investigation by appointing a local investigator under Order XXVI Rule 9 of C.P.C.

11) In *Pilli Yadaiah and others v. Pilli Komraiah and others*³ another learned Single Judge of this Court while dealing with the application for appointment of commissioner held as under:

“The appointment of Advocate-Commissioner to note the physical features in view of the contradictory stands taken by the parties is essential to avoid voluminous oral evidence.”

12) Having regard to the judgments referred to above and taking into consideration the facts in issue, appointment of advocate-commissioner to localize the schedule property with the assistance of Town Surveyor and to note down the physical features of schedule property may not amount to collecting evidence but on the otherhand it would help to avoid voluminous oral evidence.

13) Accordingly, the Civil Revision Petition is allowed setting aside the order, dated 26.10.2017 passed in I.A.No.1884 of 2016 in

² (2008) 8 SCC 671

³ (2013) 6 ALT 158

O.S.No.223 of 2011 on the file of the Principal Junior Civil Judge, Rajamahendravaram and consequently, I.A.No.1884 of 2016 stands allowed. The trial Court is directed to appoint the Advocate-commissioner to localize the schedule property with the assistance of town Surveyor and to note down the physical features of the schedule property. There shall be no order as to costs.

14) Miscellaneous petitions, if any, pending shall stand closed.

25.01.2018
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JUSTICE C. PRAVEEN KUMAR