

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No. 7473 of 2017

Date : 13.3.2018

Between:

Vurugonda Sarangapani S/o Pedda Komuraiah
60 years
R/o H No. 33-5-72, Thimmapur village,
Hanamakonda, Warangal district

Petitioner

And

Kore Raj Kumar S/o late Komuraiah
40 years
R/o H No. 2-140/1, Rangampalli village,
H/o Jaggaiahpalli
Jammikunta mandal, Karimnagar district and others

Respondents

The Court made the following:



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ORAL ORDER:

Heard learned counsel for petitioner Sri Ghanshamdas Mandhani and learned counsel for respondents Sri B Narayana Reddy.

2. Revision petitioner is plaintiff. Respondents herein are defendants. Parties are referred to as they are arrayed before the Court below.

3. Plaintiff filed suit in O.S. No. 806 of 2016 for grant of permanent injunction against defendants. In the said suit, defendants filed I A No. 154 of 2017 praying to appoint Advocate Commissioner to ascertain the actual location of the suit schedule property; the property purchased by defendant No.1; to identify both the properties and also for fixation of boundaries with the help of Mandal Surveyor, for better adjudication of the case. The said plea of the defendants was contested by the plaintiff. By order dated 24.11.2017 against which this revision is preferred, the trial Court allowed the petition and appointed Advocate Commissioner.

4. Learned counsel for plaintiff/petitioner submits that the plaintiff owns land to an extent of Ac.1.33 guntas in Survey No. 328/A/1 (328/ ౨ /1) and 328/AA (328/ ౩) (previously 328/1 and 328/2) Thimmapur revenue village, Hanamakonda mandal, Warangal district. In the schedule appended to the suit, boundaries are also specified. By referring to the averments of the defendants in the written statement, learned counsel for plaintiff would submit that defendants admitted the ownership and possession of land to an extent of Ac. 1.33 guntas and specifically asserted that there is no dispute on possession of the plaintiff over the suit land. When there is no such dispute, there is no need to

appoint Advocate Commissioner. Further, defendants also filed O.S. No. 835 of 2016 wherein plaintiff is not a party and in the said suit defendants seem to have a grievance on boundary vis-a-vis defendants therein. The simple sale deed on which reliance was placed by the defendants, did not contain boundaries nor in the written statement any boundaries are specified by the defendants to contend that there is a boundary dispute and that under the guise of injunction suit, plaintiff was trying to encroach into their land. According to learned counsel for plaintiff, the trial Court erred in not appreciating this contention and ordered appointment of Advocate Commissioner.

5. Per contra, learned counsel for respondents-defendants Sri B.Narayana Reddy would submit that defendants purchased land to an extent of Ac. 6.05 guntas in survey No. 328/ whereas on ground only Ac.5.13 guntas is available and they are in possession of the same. Thus, there is shortfall of large extent of land and that plaintiff may be in possession of that land illegally. Therefore, Advocate Commissioner can inspect the land, conduct survey to ascertain true facts and submit report on physical position.

6. As rightly contended by the learned counsel for plaintiff, in paragraph 4 of written statement filed in the suit, defendants admitted extent of land owned by the plaintiff and his possession. Even in counter affidavit filed before this Court, defendants do not dispute possession of plaintiff over suit land but state that dispute is on excess land alleged to be in possession of plaintiff. The boundaries of the land claimed by the plaintiff is specified in the schedule. As these facts are admitted, prima facie, I do not see any justification to appoint Advocate Commissioner. Appointment of Advocate Commissioner is nothing but gathering evidence by defendants. The trial Court erred in taking note of boundaries specified in another suit filed by first defendant, where plaintiff is not a party.

7. If the defendants have any other claim with reference to possession of their land by any other person including the plaintiff in this suit, it is open to the defendants to work out their remedies as available in law but they cannot ask for appointment of Advocate Commissioner in this suit, more so, when relevant facts with reference to ownership and possession to the extent of land claimed by the plaintiff in the suit is not disputed.

8. Therefore, order under revision dated 24.11.2017 is set aside and the revision petition is allowed. However, it is made clear that observations made herein above are only for consideration of the order in I A No. 154 of 2017 and uninfluenced by observations made herein, the trial Court shall proceed to consider the respective contentions urged in the suit. No costs. All pending miscellaneous petitions are closed.

DATE:13.3.2018
TVK



P NAVEEN RAO,J

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