

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION NO.3119 OF 2016

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dated 08.03.2016 in I.A. No.1384 of 2012 in O.S. No.684 of 2012 of the Special Sessions Judge for Trial of Cases under SC&ST (POA) Act, 1989-cum-VII Additional District & Sessions Judge, Ranga Reddy District at L.B. Nagar.

The petitioners are defendants 4 and 6 in the said suit which was filed by the respondents against the petitioners and other defendants for recovery of possession of suit schedule property which is said to be in possession of the first defendant, for a perpetual injunction against all the defendants, including the petitioners from interfering with the alleged peaceful possession of the first respondent over the suit schedule property and for damages against all the defendants for the alleged illegal encroachments over the suit schedule property.

It is the case of the first respondent in the suit that she had purchased plot No.1 of an extent of Ac.1.00 cts under a registered sale deed dt 17.09.1980 and that he acquired title to the neighbouring plot No.2 of Ac.1.00 under a registered gift settlement deed dt. 02.01.2004 from the donor; that these two acres of land have road on the northern side and western side; the first defendant is his immediate neighbour and defendants 1 to 4 have Ac.1.00 cts each; defendants 5 and 6 have jointly Ac.1.00 cts and defendants 2 to 6 have constructed a common compound wall for the entire land inclusive Ac.4.00 cts of land; that the first respondent had gone abroad and had stayed

abroad for 18 years and when came back he suspected that the size of his plots had got reduced. He alleged that he got survey done through a licenced surveyor and came to know that Ac.0.13 gts of land is the short fall. He alleged that the first defendant along with defendants 2 to 6 had illegally encroached into the land and occupied the said extent.

Written statement was filed by the second defendant opposing the said plea. He contended that the first defendant did not file any documents before the court to state on what basis he arrived at the conclusion that his land is less than the actual extent. He denied that the defendants had grabbed the suit schedule property while the first respondent was abroad. According to them, the suit schedule property might have been lost in road widening.

The petitioners herein adopted the written statement of the second defendant.

Pending the suit, the first respondent filed I.A. No.1384 of 2012 under Order XXVI Rule 9 CPC for appointment of Advocate Commissioner to measure the entire lands of all the defendants, including the first respondent's land i.e., plot Nos.1 to 7 in Sy. No.750 of Korremula village, Ghatkesar Mandal as per their respective registered sale deeds. He contended that measurement of land of all the defendants were necessary for adjudication of the claim in the suit.

Counter affidavit was filed by the second petitioner/6th defendant herein opposing the said application. He went on to allege that there is no evidence to show that first respondent worked there for a period of eighteen years and he also did not file the documents

before the court on what basis he arrived at the conclusion that the land is less than the actual extent. He again reiterated that if the land is less, the same might be due to road widening on the northern side of plot No.1 of the first respondent, but not due to encroachment of the defendants. He also stated that earlier in January, 2012, the first respondent had approached the Mandal Revenue Officer, Ghatkesar Mandal for measurement of the land, that a survey was done at that time and there is no necessity to conduct a fresh survey.

By order dt. 08.03.2016, the court below allowed the said application and appointed an Advocate Commissioner to measure the entire lands of the first respondent as well as the petitioners and other respondents basing on the respective sale deeds.

After recording the contentions on both sides, the court below held that where there is a boundary dispute between the parties to the suit, an application for appointment of Commissioner to demarcate the lands and submit the report can be maintained. It noted that the first respondent's plea is that Ac.0.13 guntas of the suit schedule property was encroached by the petitioners and other respondents while the petitioners and the other respondents, deny the same, and the report of the Advocate Commissioner would definitely assist the court to arrive at a just decision in the matter.

Assailing the same, this revision is filed.

Counsel for the petitioners contended that the court below erred in appointing the Advocate Commissioner in the facts and circumstances of the case. According to him, the Ac.0.13 guntas which the first respondent claims to have been encroached by the petitioners and other respondents was, in fact, acquired in road

widening. Alternatively, he also contended that the first respondent might have constructed leaving the said extent which might have gone in road widening. He sought to rely on certain statements in the cross-examination of the first respondent in support of his submission. Counsel for the respondent refuted the said contentions and supported the order of the court below.

From the contentions of the parties, it is clear that there is an allegation of encroachment by the petitioners and other respondents made by the first respondent. It is also not in dispute that the plots of the first respondent are adjacent to the plots of the first defendant and to the other defendants.

In **Haryana Wakf Board v. Shanti Sarup**¹, the Supreme Court has held that in case where demarcation of the disputed land is warranted, it would be appropriate for the Court to direct investigation by appointing a legal Local Commissioner under Order XXVI Rule 9 CPC.

This court also in **Badana Mutyalu v. Palli Appalaraju**² has held that in circumstances where there is controversy as to identification, location or measurement of the land, legal investigation should be done. This was reiterated in **Jajula Koteswar Rao v. Ravulapalli Masthan Rao**³.

The basis behind the said rule is that the evidence in cases of this nature, because of its peculiar nature is available only on the spot, and such evidence cannot be taken in court. The report of the Advocate Commissioner will elucidate a point which may otherwise be

¹ (2008) 8 SCC 671

² 2013 (5) ALD 376

³ 2015 (6) ALD 483

left in doubt or if there is ambiguity on record. The Commissioner, in effect, is a projection of the court, appointed for a particular purpose.

For the aforesaid reasons, I see no error of jurisdiction the order passed by the court below warranting interference by this court with the impugned order in exercise of the powers under Article 227 of the Constitution of India. Accordingly, the CRP is dismissed. No costs.

Miscellaneous petitions, pending, if any shall stand closed.

M.S. RAMACHANDRA RAO, J

Date: 05.07.2019

MRKR

