

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

C.R.P.No.312 of 2019

ORDER:

Heard the learned counsel for the petitioner.

2. This Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.30-01-2019 in I.A.No.866 of 2018 in O.S.No.11 of 2010 of the Principal Junior Civil Judge at Kalwakurthy.

3. Petitioner is the plaintiff in the suit. She filed the said suit for declaration of her title to an extent of Ac.1.28 gts in Sy. No.24/2 of Gundala village, recovery of possession of the said property from the respondents and also to demarcate the said land by fixing boundary stones through the Mandal Surveyor.

4. Eight years after the suit was filed, petitioner filed I.A.No.866 of 2018 to appoint an Advocate Commissioner to fix up the boundaries of the plaint schedule property with the assistance of Assistant Director, Survey of Land Records, Nagarkurnool. In the said application, the petitioner contended that the respondents had occupied the suit schedule property by removing the boundary stones on 17-11-2007.

5. Counter affidavit was filed by the respondents pointing out that petitioner did not file any evidence before the Court to show that the suit land as per the boundaries was purchased by her mother, that

later she purchased the same and vendor of the petitioner has no valid title to the suit land. It was also contended that the burden lies on petitioner to prove her title to the suit schedule land and later she has to seek for demarcation and recovery of possession. It was pointed out that if the petitioner proves her title, then relief of recovery of possession can be granted and in the execution proceedings, possession of the property would be delivered to her by demarcation.

6. By order dt.30-01-2019, the Court below dismissed the said I.A. It observed that since the relief of demarcation is sought as a main relief in the suit, such relief cannot be granted in interim application and can only be granted after both parties adduced oral and documentary evidence and a finding is given in favour of the petitioner about her title.

7. Challenging the same, this Revision Petition is filed.

8. Learned counsel for the petitioner contended that the case of the petitioner is that Ac.1.28 gts of land belongs to her and the defendants had occupied her land; that they are pattadars of only for Ac.7.20 gts; and since the petitioner is alleging that boundary stones of the suit schedule property were removed, it is necessary to demarcate the land through an Advocate Commissioner pending suit.

9. Admittedly, the petitioner had prayed in the main suit for grant of relief of demarcation of the suit schedule property and had also sought for declaration of title and recovery of possession. Once the

said relief of demarcation has been sought in the main suit, there cannot be any interim order permitting such demarcation pending suit.

10. Therefore, I do not see any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

11. Accordingly, the Civil Revision Petition fails and is dismissed. No costs.

12. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-02-2019
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