

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

CRP.No.s 335 and 345 OF 2019

COMMON ORDER:

Since both these Revisions raise a common issue and respondents are common to both the Revisions, they are being disposed of by this common order.

2. In both the Revisions, petitioners are plaintiffs in O.S.No.s 35 and 36 of 2013. They had filed the said suits against the respondents for a Perpetual Injunction restraining the respondents from interfering with their alleged peaceful possession and enjoyment of the plaint schedule properties which are two separate house plots said to be of an extent of 121 sq. yards each in survey No.1133 of Wanaparthi Town and Mandal.

3. The respondents filed written statements opposing the same contending that under the guise of injunction, petitioners are trying to dispossess them from the land belonging to them in survey No.194 of Srinivasapur sivar.

4. Pending the suit, petitioners had filed I.A.No.290 of 2018 in O.S.No.35 of 2013 and I.A.No.291 of 2018 in O.S.No.36 of 2013 under Order XXVI Rule 9 CPC to appoint an Advocate-Commissioner to localize the plaint schedule properties with the assistance of a Surveyor to find out, whether they are in survey No.1133 as is alleged by the petitioners, or in survey No.194 as is alleged by the respondents.

5. Petitioners alleged that the said plots were allotted to them under Patta Certificates issued on 15.02.2003 by the State Government and it is necessary to identify the location of the plots in view of the dispute being raised by the respondents.

6. Counters were filed by the respondents opposing the said applications and disputing even the assignment made to the petitioners. They contended that in an interim injunction application, earlier petitioners had tried to get an Advocate-Commissioner appointed but the same had been rejected, and these present applications had been filed intentionally to drag on the suits.

7. By separate orders dt.13.11.2018, the Court below dismissed both the applications. After recording the contentions of the parties, the Court below observed that the suits having been filed for relief of perpetual injunction, burden is on the petitioners to prove that the plaint schedule properties are located in survey No.1133 and this aspect cannot be entrusted to an Advocate-Commissioner. It also distinguished the decisions cited by the counsel for the petitioners.

8. Assailing the same, these two Revisions are filed.

9. Counsel for the petitioners contends that localization has to be done for the Court to arrive at a just decision in the matter and no amount of oral evidence can be helpful because evidence from

its peculiar nature is on the spot, and the petitioners should not be denied an opportunity to establish the location of the respective plaint schedule properties in survey No.1133 merely because the respondents are opposing the appointment of an Advocate-Commissioner.

10. Counsel for the respondents in both the Revisions supported the order passed by the Court below.

11. The object of local investigation under Order XXVI Rule 9 CPC is to collect evidence at the instance of a party, who relies on it and which evidence cannot be taken in a Court but can only be taken from its peculiar nature on the spot. Such evidence would elucidate a point, which otherwise left a doubt or crunch on the point.

12. A local investigation is the best way to find out in which survey number the respective plaint schedule properties are located.

13. The Supreme Court of India in ***Haryana Waqf Board v. Shanti Sarup and Others***¹ also held that in a case where demarcation of a disputed land is there, direct investigation by appointing a Local Commissioner under Order XXVI Rule 9 of the CPC.

¹ 2008(8) SCC 671

14. This Court has also held in ***Bandaru Mutyalu and Another v. Palli Appalaraju***² and ***Sarika Kadam v. Brahmaiah***³ that in circumstances where there is controversy as to identification, location or measurement of the land, local investigation should be done.

15. Having regard to the above settled legal position and having regard to the issue in the suit, which specifically requires determination of location of the respective plaint schedule plots and determination whether said plots are located in survey No.1133 or in survey No.194, the Court below erred in dismissing I.A.No. 290 of 2018 in O.S.No.35 of 2013 and I.A.No.291 of 2018 in O.S.No.36 of 2013.

16. Accordingly, both these Revisions are allowed; the orders dt.13.11.2018 passed in I.A.No.290 of 2018 in O.S.No.35 of 2013 and I.A.No.291 of 2018 in O.S.No.36 of 2013, on the file of the Junior Civil Judge, Wanaparthy, are both set aside and both the I.A.s are allowed. No order as to costs.

17. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

22nd August, 2019.

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² 2013(5) ALD 376

³ Dt.14.03.2019 in CRP.No.5134 of 2018