

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.576 of 2019

ORDER:

This Revision is filed challenging the order dt.25.09.2018 in I.A. No.519 of 2017 in O.S. No.1137 of 2008 of the II Additional Senior Civil Judge, Ranga Reddy District.

The petitioner herein is the defendant in the suit.

The respondent/plaintiff filed the said suit against the petitioner for perpetual injunction restraining the petitioner from interfering with its alleged possession and enjoyment of the plaint schedule property said to be located in Sy. No.102 of Medipally village, Ghatkesar Mandal, Ranga Reddy District.

2. The petitioner filed a written statement contending that, in fact, the suit schedule property is in Sy. No.101 and not in Sy. No.102 as is being alleged by the respondent.

3. The petitioner then filed I.A. No.1950 of 2008 under Order XXVI Rule 9 CPC to appoint an Advocate Commissioner to demarcate Sy. Nos.101 and 102 by fixing boundary stones as per original village Tippon and village map with the help of Assistant Director, Survey and Land Records, Ranga Reddy District to resolve the dispute between the parties.

4. The said application was dismissed by the trial court on 28.10.2010.

5. The petitioner then filed C.R.P. No.1570 of 2011 which was allowed on 18.08.2016.

6. Thereafter alleging that the Advocate Commissioner did not execute warrant and file any report, but merely closed the warrant on 11.03.2017, the petitioner filed I.A. No.519 of 2017 in O.S. No.1137 of 2008. He contended that it is also necessary for the Advocate Commissioner to identify in which survey number (whether Sy. No.101 or 102), the suit

schedule property falls, in addition to demarcating, Sy. Nos.101 and 102. He contended that unless this is done, no useful purpose would be served by appointing the Advocate Commissioner.

7. Respondent opposed the said application and contended that such prayer cannot be entertained as it would amount to gathering evidence. It also contended that it would protract the case further.

8. By order dt.25.09.2018, the Court below dismissed the said application holding that additional warrant to the Advocate Commissioner for identifying in which survey number the suit schedule property falls cannot be issued, since the warrant was issued as per the directions of this Court. It also recorded that Advocate Commissioner has executed the warrant and that the petitioner did not file any objections to his report.

9. It is now stated by both counsel that there is no report filed by the Advocate Commissioner in the suit at all. Therefore, it cannot be said that the Advocate Commissioner has executed the warrant.

10. In my considered opinion, merely demarcating Sy. Nos.101 and 102 of Medipally village will not help, because it is important to also find out in which of those survey numbers the plaint schedule property would fall. This evidence would be available only on the site and no amount of oral or documentary evidence would establish this fact.

11. In **Badana Mutyalu v. Palli Appalaraju**¹ this court has held that the object of local investigation under Order XXVI, Rule 9 CPC is to collect evidence at the instance of the party who relies on the same and which evidence cannot be taken in Court but could be taken only from its peculiar nature, on the spot; and such evidence would elucidate a point which may otherwise be left in doubt or ambiguity on record. It observed that in situations where there is a controversy as to identification, location or measurement of the land, local investigation should be done at an early

¹ 2013 (5) ALD 376

stage so that the parties are aware of the report of the Commissioner and go to trial prepared.

12. In **Haryana Waqf Board v. Shanti Sarup**² the Supreme Court held that in case where demarcation of the disputed land is warranted, it would be appropriate for the court to direct the investigation by appointing a Local Commissioner under Order XXVI Rule 9 CPC and the said judgment has also been followed in **Jajula Koteswar Rao v. Ravulapalli Masthan Rao**³ by this Court.

13. Therefore, there is no merit in the contention of the counsel for the respondent that Advocate Commissioner cannot be appointed to also determine in which survey number the suit schedule property falls.

14. If the order passed in the C.R.P. No.1570 of 2011 would not serve the purpose of determination of the location of the land in question, it is within the jurisdiction of the trial court to give further directions so that the said issue is also taken up and noted by the Advocate Commissioner when he files the report.

15. Accordingly, the Civil Revision Petition is allowed; order dated 25.09.2018 in I.A. No.519 of 2017 in O.S. No.1137 of 2008 of the II Additional Senior Civil Judge, Ranga Reddy District, is set aside and the said I.A. is allowed. The Court below is directed to issue warrant in accordance with the prayer in I.A. No.519 of 2017 to another Advocate in as much as the earlier Advocate Commissioner has admittedly not filed any report, pursuant to the earlier direction given in C.R.P. No.1570 of 2011 till date. No costs.

16. Miscellaneous petitions pending, if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

Date: 13.08.2019

MRKR

² 2008 (8) SCC 671

³ 2015 (6) ALD 483

