

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

CIVIL REVISION PETITION No.559 OF 2019

ORDER:

This Revision is filed by the petitioner challenging the order dated 27.02.2019 in C.M.A.No.2 of 2017 of the Principal District Judge at Khammam.

2. The petitioner is the plaintiff in the suit O.S.No.33 of 2016 which she filed for perpetual injunction against the respondents in respect of an extent of Ac.1-02 gts., in Sy.No.80 at Mamatha Hospital Road, Khammam.

3. The written statement was filed by the respondents opposing the suit claim.

4. The petitioner filed I.A.No.145 of 2016 in the suit before the Senior Civil Judge, Khammam, under Order XXXIX Rules 1 and 2 of CPC seeking ad-interim injunction in respect of the subject property by restraining the respondents from interfering with her alleged peaceful possession and enjoyment thereof pending suit.

5. Initially, the status-quo order was granted therein and ultimately the said I.A. was dismissed on 05.01.2017.

6. This was challenged by the petitioner in C.M.A.No.2 of 2017 before the Principal District Judge, Khammam.

7. By order dated 08.03.2017, the said C.M.A. was also dismissed.

8. The petitioner then questioned the same in C.R.P.No.1316 of 2017.

9. By order dated 02.01.2018, the said Revision was allowed and the matter was remitted back to the Court of Principal District Judge, Khammam to appoint an Advocate Commissioner for measurement and demarcation of the total extent of Sy.No.80 including various extents in the said survey number allegedly sold by the petitioner and her predecessors-in-interest and also the land acquired by the State Government out of the said survey number, in order to determine whether Ac.1-33 guntas, is part of Sy.No.80 of total extent Ac.9-08 guntas, or it is different. The petitioner was directed to file documents relating to alienations made by herself or her predecessors out of the total extent of the land owned by them in Sy.No.80. The Court also directed to identify whether construction being taken up by the respondents is in any part of the plaint schedule property, which belongs to the petitioner or whether it is part of the property, which was acquired by the State.

10. Upon remand, an Advocate Commissioner was appointed by the Principal District Judge, Khammam.

11. But, it appears that the petitioner's counsel stated that all documents relating to alienations made by the petitioner or her predecessor-in-interest are not available at present, and after finalization of the total extent of land in Sy.No.80 of Pakabanda Revenue Village and after obtaining the said documents, they

would be furnished. It was also requested by the counsel for petitioner that the warrant be executed by the Commissioner in the meantime.

12. The Commissioner took the assistance of the Deputy Inspector of Survey and filed his report on 12.06.2018 along with location sketch stating that the acquisition for Nagarjuna Sagar Canal was only Ac.1-01 gts., in Sy.No.80/2 though the Notification mentioned Ac.1-33 gts.

13. Basing on this report, the lower appellate court dismissed C.M.A.No.2 of 2017 on 27.02.2019 observing as under :-

“Now the further question is whether the land to an extent of Ac.1.33 gts in Sy.No.80 which is acquired by the NSP canal authorities for laying the canal is falling under Sy.No.80 out of 9.08 gts and that was the issue which is referred to this Court by Hon’ble High Court to decide. The commissioner report shows that the land which is proposed for construction of substation is forming part of acquired land for NSP canal. The rough sketch shows that the proposed suit schedule was shown to be lying under 81/ 1 not of plaintiff and such land is contiguous to the suit schedule land shown by the plaintiff. That contiguous land is part of Sy.No.80 which covers for laying of NSP canal. This report has been objected by filing objection on two grounds. 1st ground is that the survey was not done with proper instruments and entire land of Sy.No.80 was not done. The commissioner report shows that boundaries of Sy.No.80 was fixed by making survey of other survey numbers since the boundaries stones of sy.no.80 was not in existence and while fixing the survey, the surveyor has used chaining, taping and GPS machine. Use of different instruments was used on account of the area come up with constructions and when the area is covered with constructions, it is difficult to use only chaining and tapping methods. The authorities have rightly

taken assistance of GPS method also. The further objection of the counsel for plaintiff is that different maps were obtained in fixing boundaries. For this also I do not find any substance. The maps which are available with the survey authority were taken into account for fixing boundaries. The further objection is report which is filed in the court and report he obtained from the Asst. Director, Survey and Settlement, Khammam in respect of report forming part of advocate commissioner report is not one and same. This objection is also untenable. On comparing with the sketch part of advocate Commissioner Report and the sketch which is filed by the plaintiff and they are one and the same.

21. The next objection is that advocate commissioner did not fully measure the extent in sy.no.80. It is also untenable. From the reasons given in the report, it clearly shows that the plaintiff could not furnish extent of land which they sold and the plotted area. It is difficult for the advocate commissioner to measure the entire land unless the area which is plotted and the area which they have sold out is furnished to the advocate commissioner, the advocate commissioner is justified in not resorting to survey of entire extent in Sy.No.80 and they have categorically measured the NSP canal land which is identified land falling under Sy.No.80”

14. Assailing the said order, this revision is filed.

15. Learned counsel for petitioner contended that before C.M.A.No.2 of 2017 was decided earlier on 08.03.2017, the respondents had produced in the CMA, Ex.R-8-Award No.41/77 in L.A.Case No.A1/873/77 dated 22.10.77 relating to the acquisition of Ac.1-33 gts., in Sy.Nos.80/2A and 80/2B and in that award, it is mentioned that there was a report of Patwari that the area in Sy.No.80 though mentioned as Ac.9-08 gts., in the village Accounts is in fact much more; that the said report of Patwari was not produced before the lower appellate Court by the respondents;

that the Advocate Commissioner did not fully measure the extent of Sy.No.80 as directed in the order passed by this Court on 02.01.2018 in C.R.P.No.1316 of 2017; and therefore, the order passed by the lower appellate Court should be set aside.

16. Learned Government Pleader for Arbitration appearing for respondents 1 and 2 and Si G.Vidya Sagar appearing for respondents 3 to 5 contend that the petitioner did not co-operate with the Advocate Commissioner and produce copies of sale deeds relating to the sale transactions done by petitioner and her predecessor-in-interest and so the petitioner cannot now take the advantage of her own wrong and complain against the Advocate Commissioner's report.

17. A reading of the order dated 02.01.2018 passed by this Court in C.R.P.No.1316 of 2017 indicates that the Advocate Commissioner to be appointed by the Principal District Judge, Khammam, after remand by the said Court is to demarcate and measure the total extent of Sy.No.80 and his report should include various extents sold by petitioner and her predecessor-in-interest as well as the land in Sy.No.80, which was acquired by the Government. This direction of the Court was not complied with by the Advocate Commissioner.

18. The petitioner did not produce sale deeds of various extents sold by her and her predecessor-in-interest and the respondents did not produce Patwari report referred to in Ex.R-8, which showed that the extent in Sy.No.80 is more than Ac.9-08 gts.

19. It appears that for both these reasons, the Advocate Commissioner was disabled from demarcating entire extent of Sy.No.80 and identifying the portion where respondents 3 and 4 are making construction and whether the said construction is part of the land, which was acquired by the State or located in the petitioner's property.

20. Since the issue requires to be resolved, I deem it appropriate to set aside the impugned order and remand C.M.A.No.2 of 2017 again to the Court of Principal District Judge, Khammam, by entrusting to the same Advocate Commissioner (to whom it had earlier entrusted the warrant for measurement and demarcation) to again execute the said warrant subject to the petitioner furnishing (within two weeks from the date of receipt of a copy of this order) sale deeds of various extents in Sy.No.80 in which the petitioner and her predecessor-in-interest had sold, and subject to the respondents filing report of the Patwari, which was referred to in Ex.R-8 at page No.7 stating that the area in Sy.No.80 is more than Ac.9-08 gts., which is mentioned in the Village Accounts in the same time.

21. After these documents are provided by the respective parties, the Advocate Commissioner shall proceed to execute the warrant again with the assistance of the Survey officials attached to the office of Assistant Director of Survey, Khammam. This exercise shall be completed within four weeks from the date of furnishing of the above documents and both parties shall co-operate with the

Advocate Commissioner and the Survey Department officials for expeditious execution of the warrant of commission by the Advocate Commissioner.

22. After the said Commissioner files his report, both parties would be entitled to file objections thereto and the matter would again be adjudicated by the Principal District Judge, Khammam afresh uninfluenced by the earlier orders by his Court or by this Court. It is made clear that this Court has not expressed any opinion on the claims and counter claims of the parties.

The Civil Revision Petition is disposed of accordingly. No costs.

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

M.S. RAMACHANDRA RAO, J

Date: 12.03.2019

Note:

Furnish copy in one week

(B/o)

Prv