

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.907 of 2019

ORDER:

This Revision is filed challenging the order dt.30.06.2018 in I.A.No.131 of 2018 in OS.No.114 of 2017 of the Senior Civil Judge, Siddipet.

2. Petitioners are defendants in the above suit.

3. The respondent filed the said suit against the petitioners for declaration that she is the owner and possessor of the suit schedule properties, which are two plots, and for perpetual injunction.

4. She alleged that her husband purchased the plaint schedule properties under registered Sale Deed dt.15.02.1993 and obtained possession from the previous owner, and since then she is in possession and enjoyment of the suit schedule property; that petitioners created the documents and tried to interfere with her possession and enjoyment of the property on 09.07.2017, and therefore she filed the suit.

5. Written statement was filed by the petitioners opposing the suit claim and contending that they are in possession and enjoyment of the land of 666 sq. yards including the

land being claimed by the respondent and they had purchased it from one V.Prathap Reddy under two registered sale deeds. They also claimed that they constructed a compound wall including the said extent. According to them, the said property falls in Survey No.146 belonging to their vendor and does not fall in survey No.144 as is being alleged by the respondent. They denied that the land claimed by the respondent does not exist on the spot at all.

6. Pending the suit, petitioners filed I.A.No.131 of 2018 under Order XXVI Rule 9 CPC to appoint an Advocate Commissioner to verify, whether the suit land is part of Survey No.144 or part of Survey No.146 of Pregnapoor village, and also to find out, whether the compound wall is constructed for 250 sq. yards or for 666 sq. yards, with the help of Assistant Director of Survey and Land Records.

7. This application was opposed by the respondent, who contended that this amounts to collection of evidence and is impermissible in law.

8. By order dt.30.06.2018, the Court below dismissed the said application observing that the sale deeds relied upon by both the parties are distinct and have separate boundaries; that it is a suit for declaration of title and perpetual

injunction and the title of the respondent is being disputed by the petitioners and it is for the respondent to prove her title to the property. It held that there is no need to prove whether compound wall is on the land claimed by the petitioners or not, and this can be done only during the trial and not at the stage before trial has commenced. It therefore held that the said application itself is premature.

9. Assailing the same, this Revision is filed.

10. Counsel for the petitioners contended that when there is a dispute as to whether the subject land is located in Survey No.144 or in Survey No.146, there is an issue of localization of the suit schedule property, which requires a survey through an Advocate Commissioner, and the view of the Court below that the application is premature and only after the evidence is led, such course of action can be adopted, is not correct. He relied upon the judgment of this Court in ***Badana Mutyalu and another v. Palli Appalaraju***¹ and ***Jajula Koteswar Rao v. Ravulapalli Masthan Rao***² apart from ***Haryana Waqf Board v. Shanti Sarup and others***³.

11. In ***Haryana Waqf Board***'s case(3 supra), the Supreme Court held that if it was a case of demarcation of disputed

¹ 2013(5) ALD 376

² 2016(1) ALT 134

³ 2008(8) SCC 671.

land, Court should direct investigation by appointing a local Commissioner under Order XXVI Rule 9 CPC.

12. In **Badana Mutyalu's** case(1 supra), this Court considered the issue relating to Appointment of Commissioner and observed that where there is a controversy as to identification, location or measurement of the land, local investigation should be done at an early stage so that parties would be aware of the report of the Commissioner and go to trial prepared and the party, against whom the report may have gone, may choose to adduce evidence in rebuttal. Similar view has been taken in **Jajula Koteswar Rao's** case(2 supra) also.

13. In this view of the matter, since there is clearly a dispute as to where the suit schedule property is located i.e., in Survey No.144 or in Survey No.146, it is desirable to appoint an Advocate Commissioner to localize it. Therefore, the Court below committed an error of jurisdiction in refusing to appoint an Advocate Commissioner and dismissing I.A.No.131 of 2018.

14. Accordingly, this Civil Revision Petition is allowed; order dt.30.06.2018 in I.A.No.131 of 2018 in OS.No.114 of 2017 of

the Senior Civil Judge, Siddipet is set aside; and the said I.A.,
is allowed. No order as to costs.

15. Consequently, miscellaneous petitions pending if any,
shall stand closed.

M.S. RAMACHANDRA RAO, J

09th July, 2019.

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