

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

CIVIL REVISION PETITION No.1324 OF 2019

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.22.04.2019 in I.A.No.973 of 2018 in O.S.No.81 of 2013 on the file of the Judge, Family Court-cum-VII Additional District Judge, Medak at Sangareddy.

2. Petitioner herein is the plaintiff in the suit.

3. He filed the said suit against the respondents for declaration of title and for perpetual injunction in respect of land to an extent of 227.5 sq. yards being plot No.4/Part and Plot No.5 along with a temporary room with roof of ACC sheets in it and compound wall in Survey Nos.762 and 763 of Ameenpur Village, Patancheru Mandal, Medak District.

4. According to petitioner/plaintiff, he purchased the said land under a registered sale deed being document No.20672 of 2007 and even at the time of his purchase, there was a room with ACC sheets therein. He alleged that one Jangamma, through whom the respondents claimed to have purchased Ac.0.05 guntas of land in Survey No.762 under registered sale deed being document No.467 of 2000 had no land at all which she could convey to the respondents. It is specifically contended that from the boundaries given in the sale deed of the respondents, the land admeasuring Ac.0.05 guntas allegedly purchased by the respondents is not at the place where Jangamma divided Survey No.762 into plots and

sold them. According to him, Jangamma sold the entire extent owned by her to different persons in 1997 itself and she had no land in 2000 to sell to the respondents in Survey No.762 and that the respondents are trying to grab the lands of petitioner by bringing into existence the said registered sale deed said to have been executed by Jangamma, who had no right to sell.

5. Subsequently the plaint was got amended and relief of recovery of possession was also sought by the petitioner on the ground that the respondents occupied the property later.

6. Written Statement was filed by the respondents opposing the said contentions and they asserted that Jangamma had title to the land which was sold to the respondents. The allegations levelled by the petitioner against the respondents were denied and the possession of petitioner's vendors was also disputed.

7. Pending the suit and at the stage when arguments are to be heard, petitioner filed I.A.No.973 of 2018 under Order XXVI Rule 9 C.P.C. to appoint an advocate commissioner to note down the physical features and surrounding structures therein.

8. In the affidavit filed in support of the application, petitioner contended that the respondents had taken a different plea before the Gram Panchayat and in the civil Court; that there is a dispute about the total extent of land that is available and these factors can be ascertained through advocate commissioner if I.A.No.973 of 2018 is allowed.

9. Counter affidavit was filed by the respondents opposing the same and contending that it amounts to collection of evidence.

10. By order dated 22.04.2019, the Court below dismissed the said application. It observed that there is no dispute regarding measurements and identity of the suit schedule property.

11. When the petitioner is claiming that the suit schedule property is measuring 227.5 sq. yards and when the respondents are claiming Ac.0.05 guntas of land amounting to 605 sq. yards, it cannot be said that there is no dispute about the area of the suit schedule property. Therefore, in order to ascertain the same as well as to know where the properties claimed by both the parties are located, it is necessary to appoint an advocate commissioner to note down the physical features of the subject plot with its dimensions along with the surrounding structures thereto. This cannot be said to be gathering of evidence because the evidence as to the area of plot would be available only on the spot and cannot be proved by oral or documentary evidence.

12. Therefore, the impugned order is set aside and I.A.No.973 of 2018 is allowed and accordingly the Civil Revision Petition is allowed. However, both parties shall be entitled to file objections to the advocate commissioner's report as and when it is filed and the Court shall consider the same along with other evidence in the suit in accordance with law. Pending Miscellaneous Petitions, if any, shall also stand dismissed.

M.S.RAMACHANDRA RAO, J

Date:20.06.2019

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