

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

C.R.P. No.3653 of 2018

O R D E R:

This Revision is filed under Article 227 of Constitution of India challenging the order dated 24.04.2018 in I.A.No.725 of 2018 in O.S.No.634 of 2010 of Principal Junior Civil Judge, Warangal.

2. Petitioner herein is the 3rd defendant in the suit. The respondents 1 and 2/plaintiffs filed the said suit against the petitioner seeking perpetual injunction restraining the petitioner and other respondents from interfering with the peaceful possession and enjoyment of suit schedule property to an extent of open land of 100 square yards which is part and parcel of Sy.No.255/1 of Shivunipally Village, Station Ganapur Mandal, within specified boundaries.

3. The petitioner/D.3 has taken a defence in his written statement that the land claimed by the petitioner does not exist in Sy.No.255/1, 255 and 257/B and D.

4. After the matter was posted for arguments, the respondents 1 and 2 filed I.A.No.725 of 2018 under Order 26 Rule 9 CPC to measure the suit schedule property and survey the same with the help of Additional Director, Survey and Land Records, Warangal contending that in view of the plea of the petitioner that property of the respondents 1 and 2 is part and parcel of Sy.No.257/B and D and in view of the plea of

the respondents 1 and 2 that their property comes in Sy.No.255, the said survey is required.

5. This application was opposed by the petitioner stating that there was earlier litigation between the vendees of the respondents 1 and 2 and one Goli Ramalingan in O.S.No.422/1985 before the Principal Junior Civil Judge, Warangal, which was decreed on 08.06.1988. An appeal A.S.No.62/1998 filed against the said judgment before the IV Additional District Judge, Warangal was also dismissed on 08.06.1998. It was also contended that respondents 1 and 2 are claiming the land belonging to petitioner in Sy.No.257/A and D possessed by the petitioner abutting to the land in Sy.No.255.

6. By order dated 24.04.2018, the Court below allowed the said application stating that there is a dispute existing as to the boundaries mentioned in the plaint and in order to resolve the conflict, appointment of Advocate Commissioner is necessary.

7. Challenging the same, this Civil Revision Petition is filed.

8. Heard the learned counsel for the petitioner and the learned counsel for respondents 1 and 2.

9. From the facts narrated above, it is clear that there is a dispute about location of the land i.e., whether it is located in Sy.No.255/1 as is being alleged by the respondents 1 and 2 or in Sy.No.257/A and D as is being alleged by the petitioner.

10. No amount of oral evidence can help to resolve this issue since the evidence of peculiar nature and is available on the spot and needs to be collected through an Advocate Commissioner.

11. This Court in ***Badana Mutyalu and another v. Palli Appalaraju***¹, this Court has held that

“...situations where there is controversy as to identification, location or measurement of the land, local investigation should be done at an early stage so that the parties are aware of the report of the Commissioner and go to trial prepared. The party against whom the report may have gone may choose to adduce evidence in rebuttal.”

12. This legal position is not disputed by the counsel for the petitioner.

13. In this view of the matter, I hold that the Court below did not commit any error of jurisdiction in appointing the Advocate Commissioner for localization of the suit schedule property.

14. Therefore, I do not find merit in the Revision and accordingly dismissed. No costs.

¹ 2013 (5) ALD 376

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

M.S.RAMACHANDRA RAO, J

25.03.2019

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