

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1436 of 2016

ORDER:

This Revision is filed challenging the order dt.20-01-2016 in I.A.No.412 of 2015 in O.S.No.56 of 2008 of the Junior Civil Judge at Medak.

2. Petitioner herein is 1st defendant in the suit.
3. The 1st respondent/plaintiff filed the said suit against petitioner for declaration of title and for perpetual injunction in respect of the plaint schedule property.
4. Written statement was filed by the petitioner opposing the suit claim and disputing the title and possession of the 1st respondent.
5. An Advocate-Commissioner had been appointed in the suit upon the application of 1st respondent in I.A.No.227 of 2014 to note down the physical features of the entire compound wall, shops, houses in the suit schedule property located in Sy.No.478 of Narsingi village, Chegunta Mandal of Medak District, and the Advocate-Commissioner submitted his report on 19-01-2015, but in the said report, no measurements were indicated. Petitioner filed objections to the said report.
6. Thereafter when the matter was posted for arguments, the 1st respondent's legal representatives filed I.A.No.412 of 2015 to appoint an Advocate-Commissioner to conduct survey of the total suit

schedule survey number more particularly entire shops and compound wall with total measurements with sketch map with the help of Mandal Surveyor, Chengunta, the Executive Officer, Gram Panchayat, Narsingi village and other authorities.

7. He contended that in the earlier report the Advocate-Commissioner did not note down the measurements, but the measurements are very important to adjudicate the suit. He contended that the petitioner was trying to grab the land of the 1st respondent forcibly and constructed shops illegally and also constructed compound wall without permission. According to him, the suit schedule land is in triangle shape and both parties are claiming same Sy.No.478 and on the southern side of the suit schedule property, land is available in the same survey number, which belongs to the 1st respondent.

8. Counter-affidavit was filed by petitioner opposing the same and contending that Advocate-Commissioner cannot be appointed in an injunction suit for collection of evidence when there is no dispute about the identity of the subject matter.

9. By order dt.20-01-2016, the Court below allowed the said application. It observed that the earlier Advocate-Commissioner did not complete the task assigned to him by considering the objections of the 1st respondent, and had not given measurements of the land; according to 1st respondent, the petitioner had constructed shopping complex within Ac.0.22 gts of land more than that of the petitioner's

own land by occupying the land of the 1st respondent and had also constructed shopping complex; in order to secure the ends of justice, it is necessary to re-survey the suit schedule property by measuring the entire land; and the same Advocate-Commissioner was entrusted the warrant and directed to measure the entire land starting from the south most corner towards Northern side and complete the measurement at the starting point. He was also directed to take the help of Mandal Surveyor for measurement.

10. Challenging the same, this Revision is filed.

11. Learned counsel for petitioner contended that appointment of second Advocate-Commissioner for the same purpose without rejecting the report of the first Commissioner and without recording reasons for so rejecting, is not legal and cited decision of this Court in **Kushal Rao Vs. Shyam Rao and another**¹.

12. Admittedly, the Advocate-Commissioner appointed earlier in I.A.No.227 of 2014 did not measure the property. The 1st respondent's L.Rs. wanted measurement of the property and the Court also felt that it is necessary to do so in order to elucidate the matter more clearly and such evidence would only be available on the spot.

13. Therefore, in these circumstances it cannot be said that the same Advocate-Commissioner, who had earlier been appointed, cannot be re-entrusted the warrant by the Court to do the work of

¹ 1997(1) ALT 93

measurements also so that his report would assist the Court in deciding the suit.

14. Therefore, I do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

15. However, the petitioner as well as respondents shall be given an opportunity to file objections to the report which will be filed by the Advocate-Commissioner, and such objections, along with the existing objections on record to the earlier report, shall be taken into account by the Court below while deciding the suit.

16. The Civil Revision Petition is dismissed with the above directions. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-04-2019
Vsv