

HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.5134 of 2018

ORDER :

This Civil Revision Petition is filed, under Article 227 of the Constitution of India, challenging the order dated 17.07.2018 in I.A.No.762 of 2017 in O.S.No.131 of 2017 passed by the Senior Civil Judge, Medchal, Ranga Reddy District.

The petitioner herein is the plaintiff in the suit O.S.No.131 of 2017. He filed the said suit for perpetual injunction restraining the respondents/defendants from interfering with her possession and enjoyment of the suit schedule property on the basis of a registered sale deed dated 20.04.2017, under which she claimed to have purchased a plot bearing No.263, admeasuring 100 square yards in Sy.No.107/7, situated at Sundar Nagar, Behind Weaker Section Colony, Quthbullapur Mandal, Ranga Reddy District. She alleged that the respondents were trying to interfere with her possession and enjoyment of the suit schedule property under the guise of a forged and fabricated Agreement of Sale.

Written Statement was filed by respondent Nos.1 to 4 and 5, contending that respondent No.5 had constructed a house in 100 square yards of land in Sy.No.107/3 in Sundar Nagar and she even made an application for regularization of the same, but the petitioner was trying to interfere with the

peaceful possession and enjoyment of the property by respondent No.5. The title of the petitioner is also disputed.

In view of the written statement filed by the respondents, the petitioner filed I.A.No.762 of 2017 under Order 26 Rule 9 of C.P.C., seeking appointment of a Mandal Surveyor to identify the survey numbers and location of the suit schedule property. In the said application, she contended that there is a dispute raised by the respondents about the location of the suit schedule property; that according to her, the suit schedule property is in Sy.No.107/7, but according to respondent No.5, it is in Sy.No.107/3, and a Mandal Surveyor may be appointed to locate the suit schedule property and identify the survey number in which it is so located.

Counter affidavit was filed by the respondents opposing the said application and a contention was raised to the effect that there is no description of any house in the plaint schedule property and so the application be dismissed.

By order dated 17.07.2018, the Court below dismissed the said application holding that the petitioner is seeking to collect evidence, that the suit was only a suit for bare injunction and the very application indicates that the petitioner is not sure about the location of the suit schedule property. The Court below observed that the Court cannot be a tool for either of the parties for fishing of or construction of evidence in support of their respective claims.

Assailing the same, this Civil Revision Petition is filed.

Learned counsel for the petitioner contended that when there is a serious dispute about the location of the suit schedule property, it is desirable to appoint a Mandal Surveyor to localize the suit schedule property and identify in which survey number it is located, and such an evidence would be available only on the spot and no amount of oral or documentary evidence would help the Court in coming to the said conclusion.

On the other hand, learned counsel for the respondents supported the order passed by the Court below.

The object of local investigation under Order 26 Rule 9 of C.P.C. is to collect evidence at the instance of the party, who relies on the same and which evidence cannot be taken in Court, but can be taken only from the peculiar nature, on the spot.

In HARYANA WAQF BOARD vs. SHANTI SARUP AND OTHERS¹, the Hon'ble Supreme Court held that in a case where demarcation of the disputed land is warranted, it would be appropriate for the Court to direct investigation by appointing a local investigator under Order 26 Rule 9 of C.P.C.

¹ (2008) 8 SCC 671

Similar view has been taken by this Court in BANDARU MUTYALU AND ANOTHER v. PALLI APPALARAJU², wherein it was held that where there is a controversy as to identification, location or measurement of the land, local investigation should be ordered.

In view of the above settled legal position, the order dated 17.07.2018 in I.A.No.762 of 2017 passed by the Court below cannot be sustained and it is accordingly set aside and I.A.No.762 of 2017 in O.S.No.131 of 2017 is allowed.

Accordingly, the Civil Revision Petition is allowed. No order as to costs.

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

M.S. RAMACHANDRA RAO, J

14.03.2019.
Msr

² 2013 (5) ALD 376

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