

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.5226 of 2018

ORDER :

Heard the counsel for petitioner, and Sri N. Harinath, counsel for 1st respondent. Respondent nos.3 and 4 have been served, and respondent nos.5 and 6 are minors represented by 3rd respondent. Respondent nos.7 to 12 have also been served, because track reports issued by the Postal Department have been filed in respect of the delivery of the notice to them.

2. This Civil Revision Petition is filed challenging the order dt.01.08.2018 passed in I.A.No.839 of 2018 in O.S.No.88 of 2010 in O.S.No.264 of 2013 on the file of the Senior Civil Judge at Nalgonda.

O.S.No.264 of 2013:

3. The petitioner herein is plaintiff in O.S.No.264 of 2013 which he has filed before the Senior Civil Judge, at Nalgonda for a perpetual injunction against respondents in respect of an extent of 1008 Sq.Yds. (equivalent to 842.69 Sq.mts.) in Survey No.513, situate at Gollaguda Village, Nalgonda District, which he claims to have purchased under a registered sale deed dt.29.01.1975.

O.S.No.88 of 2010:

4. The respondent nos. 1 to 6 had filed O.S.No.88 of 2010 against the petitioner seeking perpetual injunction in respect of a plot of area 266.66 Sq.Yds. (Open House Plot) out of Survey No.513, situated at

Ward No.5, Block No.8, Shams Nagar, B.T.S. Gollaguda area, Nalgonda Town, having purchased it under a registered sale deed dt.13.03.2010.

5. Both the above suits were tried together by the Senior Civil Judge, at Nalgonda.

6. The petitioner herein filed I.A.No.839 of 2018 in both the above suits, viz., OS.No.264 of 2013 and O.S.No.88 of 2010, invoking Order XXVI Rule 9 read with Section 151 of Civil Procedure Code, 1908 seeking appointment of an Advocate-Commissioner to note down physical features of the plaint schedule property which is subject matter of the above suits; and to localize the property which is subject matter of O.S.No.88 of 2010.

7. In the affidavit filed in support of the said application, the petitioner contended that the plot claimed by respondent nos.1 to 5 in O.S.No.88 of 2010 is non-existent, and by creating false documents they are trying to grab petitioner's property. It was also alleged that petitioner had constructed a compound wall around his property of 1008 Sq.Yds., and also erected a gate in March, 2010 and he had constructed a godown cum shelter for watchman. The petitioner contended that the truth or otherwise of the contentions of both parties can only be solved by physical examination to note down and record the existing physical features with boundaries in respect of property claimed by him which is subject matter of O.S.No.264 of 2013 and

also to verify really if there is in existence the plot of extent 266.66 Sq.yds., claimed by respondents in O.S.No.88 of 2010.

8. By order dt.01.08.2018, the Court below dismissed the above application. After referring to the contentions of parties, it held that the suit is coming for defendants' side evidence; and that the point for determination in a suit for injunction is whether the parties are in possession of the suit schedule property, and the petitioner cannot seek appointment of an Advocate-Commissioner to prove his case, and it would amount to fishing for evidence.

9. Challenging the same, the present Civil Revision Petition is filed.

10. The counsel for petitioner contended that when there is a dispute about the very existence / location of property claimed by respondents, it is necessary to have an Advocate-Commissioner appointed for localization of the property claimed by respondents, and no amount of oral evidence would suffice or assist the Court in coming to any conclusion in that regard.

11. The counsel for 1st respondent refuted the said contentions and supported the order passed by the Court below.

12. This Court in **Bandaru Mutyalu vs. Palli Appalaraju**¹ held that in circumstances where there is controversy as to identification,

¹ 2013 (5) A.L.D. 376 = 2013 (6) A.L.T. 26

location or measurement of the land, appointment of an Advocate-Commissioner can be done, and such local investigation is permitted.

13. In **Varala Ramachandra Reddy vs. Mekala Yadi Reddy and others²** and in **Bandi Samuel and another vs. Medida Nageswara Rao³** also this Court held that an Advocate-Commissioner can be appointed in an injunction suit for local inspection of the suit site and to demarcate the suit schedule property with the help of Surveyor.

14. Similar view has also been expressed in **Donadulu Uma Devi vs. Girika Katamaiah @ Basaiah and others⁴**.

15. Having regard to the settled legal position, I am of the opinion that the Court below committed an error of jurisdiction in refusing to appoint an Advocate-Commissioner in the instant case to localize the property claimed by respondents, and also to note down the physical features of the property claimed by petitioner.

16. Therefore, the order dt.01.08.2018 passed in I.A.No.839 of 2018 in O.S.No.88 of 2010 in O.S.No.264 of 2013 on the file of the Senior Civil Judge at Nalgonda, is set aside; the said I.A. is allowed; and the Advocate-Commissioner appointed by the Court shall also take assistance of an Official of the Survey Department of the State of Telangana for execution of the warrant of appointment issued to him.

² 2010 (4) A.L.D. 198

³ 2017 (1) A.L.D. 582

⁴ 2013 (2) A.L.D. 86

17. Accordingly, the Civil Revision Petition is allowed as above.

No order as to costs.

18. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18.06.2019

Ndr/*

