

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.4855 of 2015

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging order dt.06.08.2015 passed in Interlocutory Application No.149 of 2015 in Original Suit No.85 of 2013 on the file of Senior Civil Judge, at Adilabad.

2. The petitioner herein is defendant in Original Suit No.85 of 2013.
3. The respondent / plaintiff filed the suit against him for declaration of his title and for recovery of possession.
4. The plaint schedule property is a plot bearing No.104, in Survey No.43/B, admeasuring 30' x 60' situate at Sanjaynagar, Bhattisawargaon Village of Mandal and District Adilabad.
5. The petitioner herein claims to have purchased the said property under a registered sale deed bearing Document No.5759 of 2013 executed in his favour by his vendor.
6. Written Statement was filed by petitioner contending that the land of the petitioner is plot No.20 in Survey No.38/1 of the said village, but the respondent is contending that the land of the defendant is his plot No.104 in Survey No.43/B of the said Village. He

contended that the sole intention of respondent is to grab the property claimed by petitioner.

7. The respondent then filed Interlocutory Application No.149 of 2015 invoking Order XXVI Rule 9 of Civil Procedure Code, 1908 to appoint an Advocate-Commissioner to localize the plaint schedule property with the help of a Mandal Surveyor to determine whether it falls in Survey No.38/1, as is contended by petitioner.

8. The petitioner filed a counter opposing the same contending that there is nothing to be determined by the Advocate-Commissioner; that according to petitioner, his plot is in Survey No.38/1 and he had also constructed a building in his plot and that the respondent, without leading evidence, cannot file such application.

9. By order dt.06.08.2015, the Court below allowed the said application holding that it is necessary to appoint Advocate-Commissioner to draw the line between Survey No.43/B and 38/1 and to note down the physical features of the properties. It also observed that both survey numbers are adjacent to each other and if the boundary line between them is demarcated, it would assist the Court in deciding the suit.

10. Assailing the same, the present Civil Revision Petition is filed.

11. The object of local investigation under Order 26 Rule 9 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 could be taken

only from its peculiar nature on the spot. Such evidence will elucidate a point which may otherwise leave any doubt or ambiguity in record.

12. In the instant case, the location of the plot claimed by the plaintiff, whether it is in Survey No.38/1 or 43/B can only be ascertained through an Advocate-Commissioner as such evidence is available only on the spot.

13. Though the counsel for petitioner contended that the appointment of an Advocate-Commissioner cannot be permitted, this Court in **Jajula Koteswar Rao vs. Ravulapalli Masthan Rao**¹ and **Badana Mutyalu and Badana Laxminarayana vs. Palli Appalaraju**² held that where there is controversy as to identification, location, or measurement of the land, local investigation should be done at an early stage so that parties are aware of the report of the Commissioner and go to the trial prepared. It also held that there is no rule that an Advocate-Commissioner cannot be appointed before issues are framed or evidence is led and relied upon the decision of this Court in **Savitramma and another v. B. Changa Reddy**³

14. I therefore, 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.

¹ 2015 (6) A.L.D. 483

² 2013 (5) A.L.D. 376

³ 1988(1) ALT 353

15. Accordingly, the Civil Revision Petition fails and it is dismissed. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 09.09.2019

Ndr

