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

Civil Revision Petition No.5650 of 2018

ORDER:-

This Revision is filed under Article 227 of the Constitution of India challenging the order dt. 10.08.2018 in I.A.No.136 of 2018 in O.S.No.79 of 215 of the Junior Civil Judge at Jadcherla.

2. The petitioner herein is the 1st defendant in the suit.

3. The respondents/plaintiffs filed the said suit against the petitioner for declaration of their title and for perpetual injunction in respect of Acs.1.07 gts., in Sy.No.329/A and 329 of Amisthapur village, Bhoothpur Mandal, Mahabubnagar District, within specified boundaries. The 1st respondent/1st plaintiff claims to have purchased the said land under registered sale deed dt.12.04.1999 from one K.Shakuntalamma and K.Krishnaiah. It is their case that the 1st respondent/plaintiff sold away Ac.0.06 ½ gts. to respondents No.2 and 3 under a sale deed dt.10.04.2014; that thereafter, the petitioner and other defendants started to interfere with the possession and enjoyment of respondents No.1 to 3 over the suit schedule properties. It is their contention that the 1st respondent sold Ac.1.14 gts., and Ac.0.20 gts., in favour of one Murahari Rao under registered sale deeds dt.14.10.1998 and 23.02.1999. They admitted that the petitioner's family owned Ac.67.11 gts., including land in Sy.No.329; that there was oral partition among the petitioner and his brother and the petitioner was allotted Ac.2.27 gts. in Sy.No.329 apart from other lands. According to the 1st respondent, there was an oral partition of Ac.2.27 gts. in Sy.No.329 between the petitioner and the husband

of Shakuntalamma, his vendor. He contended that Shakuntalamma sold away Ac.0.27 gts. in favour of Murahari Rao under registered sale deed dt.12.10.1998 and Ac.0.23 gts., in favour of the 1st respondent apart from Ac.1.16 gts., in favour of one K.Srinivasulu. He also contended that petitioner may have an extent of Ac.0.04 gts. in Sy.No.329, but he never cultivated it and the said land was lost in road extension.

4. Written statement was filed by the petitioner opposing the suit claim and denying the title and possession of the respondents No.1 to 3 over the suit schedule property. In para 17 of the written statement, petitioner specifically contended that he had a share of Ac.0.04 gts., which is located towards road side and since he was living in Hyderabad and did not visit the land frequently, the respondents No.1 to 3 are claiming his land of Ac.0.04 gts., also to be part of their land.

5. To elucidate this point, the petitioner filed I.A.No.136 of 2018 invoking Order XXVI Rule 9 CPC and requested for appointment of an Advocate Commissioner to survey and demarcate the lands claimed by the respondents No.1 to 3 as per the boundaries shown in the plaint with the assistance of an official surveyor. He alleged that the crux of the litigation is to locate the extent of the land of the 1st respondent and the petitioner's land, and it would be easy to resolve the dispute in the suit if that is done with the assistance of an Advocate Commissioner and the official surveyor.

6. Counter affidavit was filed by the 1st respondent opposing this application. The 1st respondent denied that he stated in the plaint that the petitioner had Ac.0.04 gts. in Sy.No.329. He

contended that there is no boundary dispute between himself and the petitioner and survey of land is not necessary. According to him, appointment of Advocate Commissioner is only to protract the litigation.

7. By order dt.10.08.2018 the Court below dismissed the application. It observed that petitioner is not admitting the title of respondents No.1 to 3 over the suit land and petitioner did not also state that land purchased by respondents is existing other than the suit land. According to the Court below, there are no boundary disputes and no identity of land dispute and therefore, Advocate Commissioner need not be appointed.

8. Assailing the same, this Revision is filed.

9. From the facts narrated above, it is clear that there is a statement in the plaint of the 1st respondent that petitioner has Ac.0.04 gts. in Sy.No.329, which might have been lost in the road extension. In the written statement filed by the petitioner, it is the contention of the petitioner that this Ac.0.04 gts. is located towards road side and since the petitioner is living in Hyderabad and did not visit the land frequently, the 1st respondent is claiming that this Ac.0.04 gts., is part of his land. Thus, there is a clear dispute as to where this Ac.0.04 gts. of land.

10. In **HARYANA WAQF BOARD v. SHANTI SARUP & ORS.**[1] the Supreme Court held that in a case where demarcation of a disputed land is warranted it would be appropriate for the Court to direct investigation by appointing a local investigator under Order

[1] (2008) 8 SCC 671

XXVI Rule 9 C.P.C. This Court in **JAJULA KOTESHWAR RAO v. RAVULAPALLI MASTHAN RAO**[2] and in **BADANA MUTYALU AND ANOTHER v. PALLI ALPPALARAJU**[3] has held that in circumstances where there is controversy as to identification, location or measurement of the land, local investigation should be done by appointing an Advocate Commissioner.

11. In **Jajula Koteshwar Rao's case (2 supra)** this Court observed:-

> "The object of the local investigation under Order XXVI Rule 9 CPC 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. The Commissioner in effect is a projection of the Court appointed for a particular purpose. The law of evidence enjoins upon a party to prove the fact which he relies on and in that sense, an obligation is cast upon the party; and if he fails to discharge that obligation, adverse consequence will follow and he will have to face the repercussions of the same. This right of the party to adduce evidence gets adjudicated in the interlocutory proceedings under Order XXVI Rule 9 CPC."

12. In this view of the matter, I am of the opinion that the Court below committed an error of jurisdiction in refusing to appoint an Advocate Commissioner when there is a clear dispute about the location of Ac.0.04 gts. of land which is admitted by the 1st respondent to be belonging to the petitioner, which requires to be elucidated through an Advocate Commissioner.

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[2] 2015 (6) ALD 483
[3] 2013 (5) ALD 376

13. Therefore, the Civil Revision Petition is allowed; Order dt.10.08.2018 in I.A.No.136 of 2018 in O.S.No.79 of 2015 of the Junior Civil Judge at Jadcherla is set aside; and the said I.A. is allowed. No order as to costs.

Consequently, miscellaneous petitions if any pending in the Civil Revision Petition shall stand dismissed.

M.S.Ramachandra Rao, J

31st July, 2019

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HIGH COURT FOR THE STATE OF TELANGANA HYDERABAD