

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CIVIL REVISION PETITION No.6683 of 2018

ORDER:

This revision is filed assailing order, dated 08.10.2018, in I.A.No.654 of 2018 in O.S.No.394 of 2007 of the II Additional Junior Civil Judge, Karimnagar.

2. The petitioner is the 2nd defendant in the suit. The 1st respondent/plaintiff filed the said suit for perpetual injunction restraining the petitioner and other defendants from interfering with the alleged possession and enjoyment over the plaint 'A' schedule land and also to declare that registered sale deed dt.24.04.2000, executed by the 1st defendant/2nd respondent herein is not binding on him. The plaint schedule indicated that the property, which is subject matter of the suit, is only a vacant house site.

3. A written statement was filed by the petitioner merely stating that boundaries shown to the plaint schedule property in the suit were incorrect. Afterwards issues were framed and evidence on the side of the 1st respondent/plaintiff was concluded and the suit was coming for evidence on the side of the defendants and DWs.1 to 3 had already been examined.

4. At that advanced stage of the suit and 11 years after filing of the suit, the petitioner/2nd defendant filed I.A.No.654 of 2018 contending that there are certain structures in the subject land, such as huts and lavatories and it is just and necessary to appoint an Advocate

Commissioner to localize the land and such structures from the Western side boundary of a Hindu graveyard, which is said to be adjacent to the plaint schedule property and that there was a compound wall of the 1st respondent/plaintiff and another person towards the Southern side and open land of Dumpala Satyanarayana Reddy was situated on the Western side of the plaint schedule land.

5. Counter-affidavit was filed by the 1st respondent opposing the said application and denying the contentions of the petitioner regarding boundaries and stating that there is no uncertainty about the location and identity of the land. It was contended that there is no necessity to localize or to note down the physical features of the land. It was contended that the 1st respondent/plaintiff had also filed a sketch map showing the location of the property and the petitioner had admitted the existence of the plaint schedule property and its boundaries in her written statement, but wrongly claimed the same basing on a fabricated document. It was also observed that the Advocate Commissioner cannot be appointed for making any enquiry about the factum of possession of properties in dispute or for fishing out the information.

6. By order dt.08.10.2018, the Court below dismissed the said application stating that the application was filed after the evidence of DW.3 was over; that there was no pleading in the written statement of the petitioner about the existence of pucca structures or huts in the plaint schedule property; and an Advocate Commissioner cannot be

appointed to gather information and the parties have to prove their possession of the plaint schedule property by adducing oral and documentary evidence. It also observed that the petitioner's attitude indicated that the petitioner intends to procrastinate the litigation.

7. Challenging the same, this revision is filed.

8. Learned counsel for the petitioner contended that application for appointment of Advocate Commissioner cannot be rejected merely on the ground of delay in filing it and Advocate Commissioner ought to be appointed where there is a dispute regarding boundaries/physical features of the property and the opposite party can be compensated by imposing reasonable costs. He therefore contended that the order passed by the Court below cannot be sustained and deserves to be set aside.

9. It is not in dispute that the 1st respondent/plaintiff mentioned in the plaint that plaint schedule property is a vacant house site. But, this was not denied in the written statement filed by the petitioner. The petitioner did not raise any plea in the written statement that there were pucca structures like huts and lavatories in the plaint schedule property. Eleven years after the suit was filed, after the evidence of DWs.1 to 3 was concluded, the petitioner wants Advocate Commissioner to be appointed to localize the land and the structures on the Western side boundary of a Hindu graveyard to the plaint schedule property.

10. Without raising any contention in the written statement about the existence of the structures in the plaint schedule property, the petitioner cannot now seek appointment of Advocate Commissioner to localise the plaint schedule property and structures as sought in the application in I.A.No.654 of 2018. Though the petitioner had taken a plea that the plaintiff did not show the correct boundaries in the plaint schedule, the said issue has to be gone into at the final hearing of the suit basing on the evidence on record, and the petitioner cannot be permitted to collect about the structures in the plaint schedule property, for which there is no pleading in the written statement filed by her.

11. I, therefore, do not find any error of jurisdiction passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

12. Accordingly, the revision is dismissed. No costs.

Miscellaneous Petitions pending, if any, shall stand closed.

13th February 2018

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M.S. RAMACHANDRA RAO, J