

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.M.A.No.1208 of 2018

ORDER:

This Appeal is filed challenging the order dt.19-06-2018 in I.A.No.304 of 2017 in O.S.No.158 of 2017 of the I Additional Senior Civil Judge, Warangal.

2. Appellant is the plaintiff in the suit.

3. She filed the said suit against the respondents for declaration of title and for perpetual injunction. She claimed to have purchased under a registered sale deed bearing Doc. No.330/1983 dt.03-02-1983, the property of Ac.0.10 gts in Sy. No.117/B/3 of Palivelpula Gram Panchayat, Kumarpally village, of which, southern boundary is said to be 7 sq yds wide road.

4. Respondents are the legal representatives of the vendor of the plaintiff. They contended that the appellant is not in possession and enjoyment of the property covered by Sy. No.117/B/3, and the boundaries mentioned in the suit do not tally with the land in the said survey number. They contended that the land claimed by the appellant was in fact in Sy. No.126 of the said village.

5. Pending suit, the appellant filed I.A.No.304 of 2017 under Order 39 Rules 1 and 2 CPC for temporary injunction restraining the respondents from interfering with her alleged possession and enjoyment of the suit schedule property.

6. On 26-04-2017, *ex parte* interim injunction was granted after counter affidavit was filed by the respondents. It appears that both parties, through their counsel, represented to the Court to appoint Advocate Commissioner to demarcate and fix the boundaries of the property covered under the sale deed dt.03-02-1983 with the help of the Assistant Director of Survey and Land Records. Thereafter, the Court modified the said order of interim injunction to one of “*status quo*” with regard to nature of the property on 26-04-2017 while appointing the Advocate Commissioner for demarcation and fixation of boundaries as sought by the both parties.

7. The Advocate Commissioner then executed the warrant and filed his report on 26-07-2017. He stated that the Deputy Inspector of Survey along with chainman demarcated the property which is subject matter of the registered sale deed 03-02-1983; that on physical verification, no road is there on the southern side of the suit schedule property; that there were no adjacent owners; that according to the plaintiff, pillars were erected in the suit schedule property and these pillars were located in Sy. No.126 by the Deputy Inspector of Survey. He therefore concluded that the land shown by the petitioner is not tallying with the boundaries of the plaint schedule property and the said land is not located in Sy. No.117/B/3 but in Sy. No.126.

8. Objections were filed by the appellant to the said report.

9. The Court below by order dt.19-06-2018, vacated the order dt.26-04-2017. It observed that as per the sale deed, relied by

the petitioner, there were roads on eastern and southern side, but the Advocate Commissioner's report shows that there was no road in Sy. No.117 and so the appellant was claiming a different property from that purchased by her. It also took note of the finding of the Advocate Commissioner that the stone pillars, which the petitioner has alleged, were found in Sy. No.126 but not in Sy. No.117 and that the appellant had filed photographs showing the suit schedule property having stone pillars with fencing. It therefore concluded that the appellant failed to prove *prima facie* case that she was physically in possession of the suit schedule property within the boundaries claimed by her.

10. Assailing the same, this appeal is filed.

11. Learned counsel for the appellant contended that the Court below erred in vacating the injunction granted by it and that it had come to an erroneous conclusion without properly considering the objections raised by the petitioner to the Advocate Commissioner's report.

12. In para-VIII of the plaint, the appellant had contended that the respondents had tried to dug the trenches and erect the pillars in the suit land. According to the Court below, photographs were filed by the appellant showing land with fencing with stone pillars as the land claimed by her. The Advocate Commissioner, however, after visiting the site along with the Deputy Inspector of Survey and Land Records opined that the land with pillars is located in Sy. No.126 and not in Sy. No.117. Though the appellant claimed that on the southern

side of the suit schedule property, there was a road, the Advocate Commissioner found that there was no such road.

13. Having regard to the said finding of the Court below, I am of the opinion that the Court below did not commit any error in vacating the interim injunction granted by it on 26-04-2017.

14. Therefore, C.M.A. fails and is accordingly dismissed.
No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 20-02-2019
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