

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

C.R.P.No.7704 of 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.04.09.2018 in I.A.No.888 of 2018 in O.S.No.100 of 2018 on the file of the I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar.

2. Petitioner herein is the defendant in the above suit.
3. The respondent/plaintiff filed the said suit against the petitioner for Perpetual Injunction restraining the petitioner from interfering with his possession and enjoyment of the suit schedule property.
4. It is the contention of the respondent/plaintiff that the respondent and the petitioner were partners along with others and a specific performance suit was filed by all of them together seeking specific performance of an Agreement of Sale dt.28.09.2000 executed by others; that the said suit O.S.No.32 of 2002 was decreed by the II Additional District Judge, Ranga Reddy District; thereafter the Judgment Debtor executed registered Agreement of Sale-cum-General Power of Attorney with possession to an extent of Ac.0-30 gts each in respect of the petitioner, the respondent and two others; that the 1st respondent got thus Ac.0-30 gts of land, but the

petitioner is interfering with his possession and enjoyment of the said property.

5. Written Statement was filed by the petitioner denying allegations contained in the suit.

6. Thereafter, the respondent filed I.A.No.888 of 2018 under Order XXVI Rule 9 CPC for appointment of an Advocate Commissioner for local investigation and local inspection to elucidate the southern boundary of the property and fix its boundary by taking assistance of the Mandal Surveyor along with Tonch Map and registered documents of all the parties and to submit a report.

7. The respondent contended that the properties of the 1st respondent and the petitioner were adjacent to each other; that there is a common boundary and it ought to be established by measurement and demarcation through the Advocate-Commissioner.

8. Counter affidavit was filed by the petitioner opposing the said application and denying the averments in the said application. He contended that the 1st respondent's property is towards the northern side of the property of the petitioner but the petitioner never tried to interfere with the possession, and enjoyment of the property of the 1st respondent.

9. By order dt.04.09.2018 the Court below allowed the said application after taking note of the fact that there is a dispute between the parties in respect of the location of their common boundary; and if the boundary is demarcated through an Advocate-Commissioner as sought by the 1st respondent, the controversy raised in the suit would be settled once and for all, and no prejudice would be caused to the petitioner.

10. Challenging the same, this Revision is filed.

11. Counsel for the petitioner contended that the petitioner never interfered with the possession and enjoyment of the respondent; that the properties of the petitioner and respondent are located within the boundaries mentioned in their respective Agreements of Sale-cum-GPA executed by the Judgment Debtor in O.S.No.32 of 2002; and therefore there is no necessity for the Court to appoint an Advocate-Commissioner in the facts and circumstances of the case.

12. Counsel for the respondent refuted the said contentions and supported the order passed by the Court below.

13. From the facts narrated above, it is clear that the petitioner and respondent are neighbours and the property of the petitioner is located to the south of the property of the respondent.

14. Merely because the petitioner had denied interference with the possession of the respondent, it cannot be said that there is no such interference because such a conclusion can be drawn only after trial and after both parties adduced evidence.

15. When there is a controversy between neighbours as to where the boundary of their respective property ends, it is always desirable that the same be demarcated through an Advocate-Commissioner to avoid continuing disputes between the parties and to provide clarity. In such a situation, it would not amount to collection of evidence because such evidence is only to be had on the spot.

16. This view has been taken by me in ***Bandaru Mutyalu and another v. Palli Appalaraju***¹ wherein after considering other precedents on the issue, it was held at para 19 that:

“I hold that in situations where there is controversy as to identification, location or measurement of the land, local investigation should be done at an early stage so that the parties are aware of the report of the Commissioner and go to trial prepared. The party against whom the report may have gone may choose to adduce evidence in rebuttal.”

17. I therefore do not find any merit in this Revision and it is accordingly dismissed at the admission stage. The interim order granted earlier is vacated. The Advocate-Commissioner appointed pursuant to the impugned order shall execute the

¹ 2013(6) ALT 26

warrant of commission within one month from the date of receipt of a copy of this order. There shall be no order as to costs.

18. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

28th February, 2019.

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