

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.7571 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.372 of 2016 in O.S.No.81 of 2011 of the II Additional District and Sessions Judge, Warangal, dismissing the application filed by the petitioner/plaintiff to appoint an Advocate-Commissioner to measure the land existing and to note down the physical features in view of acquisition of a portion of land belonging to respondent by the State.

2. The Court below dismissed it on the ground that it would amount to collection of evidence and that the trial has commenced.

3. This view of the Court below cannot be sustained because if the allegation of the petitioner is correct and if he succeeds in the suit, it would then create a problem because there cannot be a decree for the entire land covered by the suit agreement of sale, because some portion of the said land would have become the property of the State.

4. In **Bandaru Muthyalu and another Vs. Palli Appalaraju**¹, this Court held that in circumstances where there is controversy as to identification, location or measurement of the land, local investigation should be done.

¹ 2013(5) ALD 376

5. In **Jajula Koteswar Rao Vs. Ravulapalli Masthan Rao**², this Court held:

“18. 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.

19. xxx xxxx

*20. In fact in **Haryana Wakf Board Vs. Shanti Sarup and others**³, the Supreme Court has also held that in a case where demarcation of the disputed land is warranted, it would be appropriate for the Court to direct investigation by appointing a local investigator under Order XXVI Rule 9 CPC.”*

6. Accordingly, the Civil Revision Petition is allowed; the order dt.04-09-2018 in I.A.No.372 of 2016 in O.S.No.81 of 2011 of the II Additional District and Sessions Judge, Warangal is set aside; and the said I.A. is allowed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 21-08-2019

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² 2015(6) ALD 483

³ (2008) 8 SCC 671