

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Petition No.30954 of 2011

ORDER:

The present writ petition is filed assailing the notice in File No.A3/1780/2011, dated 18.11.2011, issued by the 3rd respondent proposing to fix the boundaries in Sy.Nos.138 and 139 situated at Ursu Village, Warangal Mandal, Warangal District, as illegal, arbitrary and without jurisdiction and consequently to direct the 1st respondent to drop the proceedings issued in pursuance of the notice in File No.A3/1780/2011, dated 18.11.2011.

2) The case of the petitioners is that the 1st petitioner is the owner and possessor of land in Sy.No.138/A admeasuring Ac.0.14 gts., and Sy.No.139/B admeasuring Ac.0.37 gts., situated at Ursu village, Warangal District, having purchased the same through a simple sale deed, dated 15.01.1985, through her guardian Solthi Yella Goud from the original owner Gundala Kommalu, S/o.Narsaiah. Likewise, the 2nd petitioner is the owner and possessor of the land in Sy.No.143/B admeasuring 1200 Sq.Yds., situated at Ursu Village, Warangal Mandal, Warangal District, having purchased the same through registered sale deed vide document No.6887/2010, dated 27.11.2010, from the original owner Banna Bikshapathi and that they are in possession and enjoyment of the same. It is further stated that the 2nd respondent herein, who is the son of the vendor of petitioner No.1, with a mala fide intention to knock away the property, has filed an application for survey before the 1st respondent herein and as a matter of fact, there are number of civil cases pending between the

parties and in fact the 2nd respondent does not possess any land in Sy.Nos.138, 149 and 143. *In spite* of the explanations given by the writ petitioners, the 3rd respondent has issued the impugned notice under which a survey is sought to be conducted for demarcation of the land, and as such, assailing the said notice, the present writ petition is filed.

3) Heard Sri J.Venkateshwar Reddy, the learned Counsel appearing for the writ petitioners, the learned Government Pleader appearing for the 1st and 3rd respondents, and Sri D.V.Chalapathi Rao and Sri Pasham Krishna Reddy, the learned Counsels appearing for the 2nd respondent.

4) The learned Counsel appearing for the petitioners contends that the respondent No.2 has no *locus standi* to file an application before the 1st respondent seeking survey of the land as he was not the owner and moreover, civil suits were pending before the competent civil Court in respect of the subject lands, and it is for the parties to file an appropriate application before the competent civil Court for taking necessary steps to survey and demarcation of the land. Learned counsel alleges that the application filed before the 1st respondent/Tahsildar is only an attempt to create a record in favour of the 2nd respondent.

5) Per contra, the learned Counsel appearing for the 2nd respondent has stated that the father of 2nd respondent, *viz.*, G.Kommalu was the pattedar and possessor of the land in Sy.Nos.138/A, 139/B, and 143/B, and being the legal heir of the said G.Kommalu, the 1st respondent has requested for survey and demarcation of the land. He further contends that mere survey

and demarcation of the land cannot be construed as gathering any evidence and it is only to find out the correct extent of the land, the respondent No.2 has made an application before the concerned authority for survey and demarcation of the land. As a matter of fact, interlocutory application filed by the writ petitioner No.1 and another was dismissed by the lower Court, and the C.M.A. filed by them was also dismissed by the II Additional District Court, Warangal, vide Order, dated 25.02.2016 in C.M.A.No.74 of 2013.

6) When the matter came up for hearing before this Court on 29.11.2011, this Court, while admitting the case, had granted stay of the notice issued by the 3rd respondent herein proposing to conduct survey and fix boundaries in Sy.Nos.138 and 139 of Ursu Village, Warangal Mandal, Warangal District.

7) Though the matter is coming up under the caption of *interlocutory* on the basis of the vacate stay petition filed by the 2nd respondent herein, both the Counsels have agreed and consented for the disposal of the main writ petition itself and as such the main writ petition is disposed of.

8) On a pointed query posed by this Court to the learned Counsel for the petitioners as to whether any survey and demarcation of any land will affect the title or possession of the parties, the learned Counsel has fairly conceded that mere survey and demarcation of any land will not take away or confer any title to any parties nor can it be construed that possession will be taken away and given to the other party.

9) The learned Counsel for the petitioners and the learned Counsel for the 2nd respondent have fairly conceded that the survey sought to be conducted by the Mandal Surveyor can be completed but the same should be confined to only Sy.Nos.138 and 139 of Ursu Village, Warangal Mandal, Warangal District, only.

10) In view of the above submissions made by both the parties, the writ petition is disposed of directing the 3rd respondent-Mandal Surveyor to complete the survey and demarcate the land in Sy.Nos.138 and 139 of Ursu Village, Warangal Mandal, Warangal District, strictly in accordance with law duly following the procedure contemplated under the Act, the Mandal Surveyor will put both the parties on notice and take into account any work memo that may be given to him at the time of survey.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.ABHISHEK REDDY, J

Date : 10th January, 2020
smr/sur