

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.3075 of 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioners/defendants, challenging the order, dated 16.09.2019, passed in I.A.No.77 of 2019 in O.S.No.88 of 2014 by the Principal Junior Civil Judge, Kodad, whereby, the petition filed by the respondent herein/plaintiff for appointment of an advocate commissioner to note down the physical features and measurements of the suit schedule land of the respondent herein/plaintiff and the lands of the petitioner Nos.1 & 2/defendant Nos.1 and 2, was allowed.

2. Heard the learned counsel for both the sides and perused the record.

3. The learned counsel for the revision petitioners/defendants would contend that already a survey has been conducted. There cannot be a survey for the second time. An Advocate Commissioner cannot be appointed to collect evidence. Noting down the physical features and measurements of the suit schedule land amounts to collection of evidence, which is not permissible under law. The subject interlocutory application was filed at a belated stage and ultimately prayed to set aside the order under challenge and dismiss the subject I.A.No.77 of 2019.

4. On the other hand, the learned counsel for the respondent/plaintiff would contend that the Court below rightly appointed an advocate commissioner to demarcate the suit schedule land, i.e., agricultural land in an extent of Acs.1.00 guntas in Survey No.1303/1/1 (old 1303) situated at Ananthagiri revenue village and Mandal. Such an exercise is permissible even at a belated stage. The learned counsel further submitted that a private surveyor had conducted the earlier survey, which has altered the boundaries of the suit schedule land. The relief granted by the Court below is to fix the boundary stones by the Mandal Surveyor in the presence of the Advocate Commissioner. There is no legal infirmity in the order under challenge and ultimately prayed to dismiss the Civil Revision Petition.

5. Admittedly, the subject interlocutory application was filed after the completion of trial and when the suit is posted for arguments. Both the parties are claiming land in distinct survey numbers, i.e., the respondent/plaintiff is claiming land in Survey No.1303/1/1 situated at Ananthagiri revenue village and Mandal, Suryapet District, and the revision petitioner Nos.1 and 2/defendant Nos.1 and 2 are claiming land in survey Nos.1303/1/2 and 1303/1/3 situated at Ananthagiri revenue village and Mandal, Suryapet District. The subject suit is for perpetual injunction. The appointment of Advocate Commissioner to note down the physical features and measurements of the suit schedule property and the land

belonging to the respondents/defendants, with the assistance of the Mandal Surveyor, is necessary for just adjudication of subject matter of the suit. This limited exercise will not amount to collection of evidence. Under these circumstances, the impugned order, dated 16.09.2019, passed in I.A.No.77 of 2019 in O.S.No.88 of 2014 by the Principal Junior Civil Judge, Kodad, is modified as follows:

“The Mandal Surveyor is directed to record physical features and measure the suit schedule land as well as the land belonging to the petitioners/defendants, i.e., in Survey Nos. 1303/1/2 and 1303/1/3 situated at Ananthagiri revenue Village and Mandal of Suryapet district, under supervision of Advocate Commissioner appointed in the impugned order. Needless to state that the said exercise shall be conducted, after due notice to the parties on record or their counsel by the Advocate Commissioner. After completion of survey, the Advocate Commissioner shall file report into the Court in subject Interlocutory Application.”.

6. With the above directions/modification to the impugned order, this Civil Revision Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this CRP, shall stand closed.

Dr. SHAMEEM AKTHER, J

03rd February, 2020
Bvv