APHC010557782024

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3327]
(Special Original Jurisdiction)

THURSDAY, THE THIRTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE K SREENIVASA REDDY

CIVIL REVISION PETITION NOs: 3073/2024 & 3141/2024

CRP No.3073/2024:

Between:

Obulapuram Sudhakar **...PETITIONER**

A N D

M/s B L Transport Private Ltd **...RESPONDENT**

Counsel for the Petitioner:

1. V SUDHAKAR REDDY

Counsel for the Respondent:

1. SAI GANGADHAR CHAMARTY

CRP No.3141/2024:

Between:

Obulapuram Sudhakar **...PETITIONER**

A N D

M/s B L Transport Private Ltd **...RESPONDENT**

Counsel for the Petitioner:

1. V SUDHAKAR REDDY

Counsel for the Respondent:

1. SAI GANGADHAR CHAMARTY

The Court made the following Common Order:

C O M M O N O R D E R:

These two Civil Revision Petitions arise out of the Common Order, dated 26.11.2024 passed in I.A.Nos.971 of 2024 and 972 of 2024, both in O.S.No.12 of 2016 by the learned Principal Civil Judge (Junior Division), Sullurpet (hereinafter referred to, as 'the trial Judge').

2. The petitioner is the plaintiff in O.S.No.12 of 2016 pending on the file of the learned trial Judge, which is filed against the respondent herein/defendant, seeking for the relief of Permanent Injunction over the schedule property to an extent of Ac.2.01 cents situated in Survey No.91/118, Patta No.228 of Pudi village, Tada Revenue Mandal, SPSR Nellore District.

3. The petitioner herein/plaintiff filed two applications, one is, I.A.No.971 of 2024 under Section 151 of the Code of Civil Procedure, 1908 (for brevity 'CPC') seeking to reopen the suit in O.S.No.12 of 2016 and the other is, I.A.No.972 of 2024, under Order XXVI Rule 9 of CPC seeking to appoint an Advocate-Commissioner to inspect the suit schedule property to identify and to note down the physical features as well as the existing crop with the assistance of Mandal Surveyor.

4. The learned trial Judge, *vide* impugned Common Order, dated 28.11.2024, dismissed the applications, holding that the petitioner herein/plaintiff did not assign any proper reason to appoint an Advocate-Commissioner and the applications were filed only to prove his possession. Aggrieved by the said Common Order, the petitioner herein/plaintiff filed the present Civil Revision Petitions.

5. Learned counsel for the petitioner herein/plaintiff would contend that the petitioner herein/plaintiff acquired the schedule property to an extent of Ac.2.01 cents along with other properties through a Settlement Deed, dated 12.03.2015 executed by his father. The respondent herein/defendant claims right over Ac.1.43 cents out of Ac.2.01 cents situated in Survey No.91-11B on the pretext that it purchased the same from one Chellamma and her sons, and in the said document, the northern side boundary was shown as the land of plaintiff's father in Survey No.91-11B (part) and western side boundary was shown as land of plaintiff's father in Survey No.91-11A. It is the specific contention of petitioner herein/plaintiff that there was no sub-division or demarcation of the land in Survey No.91-11B and he raised paddy crop, and on appointment of the Advocate-

Commissioner is essential to note down the physical features which will be helpful for effective adjudication of the *lis* in the suit.

6. Learned counsel for the respondent herein/ defendant would contend that the immovable property was purchased by the respondent herein/defendant under Ex.B3 Registered Sale Deed, dated 24.10.2011 bearing Document No.2831/2011 and the said document proves the right and possession of the defendant over the schedule property, the plaintiff has to establish his right on his own, but at the fag-end of the suit *i.e.* at the stage of arguments, he sought appointing an Advocate-Commissioner, which is nothing but collection of evidence. The trial Court rightly dismissed the petitions and there are no grounds to interfere with the *impugned* Common Order. Hence, prays to dismiss the petitions.

7. Heard both sides. Perused the record.

8. Now the point that arise for consideration is,

Whether there is illegality or irregularity in the Common Order, dated 28.11.2024 passed in I.A.Nos.971 of 2024 and 972 of 2024, all in O.S.No.12 of 2016 by the learned Principal Civil Judge (Junior Division), Sullurpet calling for interference of this Court in exercise of powers under Article 227 of the Constitution of India?

P O I N T:

9. A perusal of material on record goes to show that the petitioner herein/plaintiff filed O.S.No.12 of 2016 on the file of the trial Judge against the respondent herein/defendant, seeking the relief of Permanent Injunction in respect of the immovable property to an extent of Ac.2.01 cents situated in Survey No.91/118, Patta No.228 of Pudi village, Tada Revenue Mandal, SPSR Nellore District. Contesting the suit, the respondent herein/defendant raised contention that they purchased Ac.1.43 cents, which is part of schedule property from one Chellemma and her sons, jointly under a Registered Sale Deed, dated 24.10.2011 bearing Document No.2831/2011. Disputing the said contention, the petitioner herein/plaintiff contends that there was no sub-division or demarcation of the land in Survey No.91-11B and he raised paddy crop in the subject land and hence, he filed the applications seeking to reopen the suit and to appoint an Advocate-Commissioner to note down the physical features.

10. A perusal of the contentions of both parties goes to show that, the property which the defendant claims to be its own property, is the part of the schedule property over which

Permanent Injunction is sought by the plaintiff. The plaintiff claims possession and title over the schedule property basing on Ex.A1-Registered Settlement Deed, dated 12.03.2015. Per contra, the respondent herein/defendant too claims to be the lawful owner and title holder of a part of the suit schedule property basing on Ex.B3-Registered Sale Deed, dated 24.10.2011 bearing Document No.2831/2011. As per the version of the petitioner herein/plaintiff, there is no sub-division or demarcation of the land in Survey No.91-11B.

11. Learned counsel for the respondent herein/ defendant contended that the appointment of Advocate-Commissioner would lead to collection of evidence. There cannot be any dispute with regard to proposition of law that an Advocate-Commissioner cannot be appointed for the purpose of collection of evidence. However, the Commissioner can be appointed for the purpose of noting down the physical features of the property in dispute. It is the case of the petitioner that entire suit schedule property is in one block and the petitioner raised paddy crop in it and to note down the physical features, as well as existing crop, an Advocate-Commissioner is to be appointed. The petitioner sought appointment of an Advocate-

Commissioner for the purpose of noting down the physical features of the suit schedule property. Indisputably, the petitioner herein/plaintiff ought to have approached the trial Court at an early point of time, seeking the appointment of an Advocate-Commissioner. However, approaching the Court at a later point of time is not a reason to reject the relief sought. Therefore, having regard to the facts and circumstances of the case and in order to note down the physical features of the suit schedule property, this Court is of the opinion that assistance of an Advocate-Commissioner can be sought. These aspects have not been considered by the trial Court in proper perspective. Hence, the impugned common order is liable to be set-aside. The Civil Revision Petitions deserve to be allowed.

12. Accordingly, the Common Order, dated 26.11.2024 passed in I.A.Nos.971 of 2024 and 972 of 2024, both in O.S.No.12 of 2016 by the learned Principal Civil Judge (Junior Division), Sullurpet is set-aside. Consequently, I.A.Nos.971 of 2024 and 972 of 2024 stand allowed. The learned Principal Civil Judge (Junior Division), Sullurpet is directed to appoint an Advocate-Commissioner to note down the physical features of the suit schedule property by fixing appropriate fee, payable by

the petitioner. The learned Advocate-Commissioner is directed to issue notice to both the parties, in advance, fixing the date of inspection. Both the parties are at liberty to submit work memos, if any, to the learned Advocate-Commissioner, who shall answer the same in his report. The learned Advocate-Commissioner is at liberty to take the assistance of Mandal Surveyor, concerned in execution of the warrant, if necessary. The entire exercise shall be completed within a period of six (06) weeks from the date of receipt of the copy of this Common Order.

13. Accordingly, the Civil Revision Petition Nos.3073 of 2024 and 3141 of 2024 are allowed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous applications, if any, pending in these Civil Revision Petitions shall stand closed.

JUSTICE K. SREENIVASA REDDY

13th March, 2025.

DNB