



2025:TSHC:51740

IN THE HIGH COURT FOR THE STATE OF TELANGANA // AT HYDERABAD

SATURDAY, THE TWENTY FIFTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE NARSING RAO NANDIKONDA

CIVIL REVISION PETITION NO: 4315 OF 2018

Petition under Article 227 of the Constitution of India, Aggrieved by the Order dated 04-05-2018 passed in I.A.No. 99/2017 in O.S.No. 19/2012 on the file of the VII Additional Junior Civil Judge at Warangal.

Between:

Banoth Rajitha, D/o Balu Naik Age about 39 Yrs., Occ. House Hold R/o Prashanth Nagar, Kazipet Warangal District

...Petitioner/Plaintiff

AND

Vaddiraju Jayasree, W/o Rajender Rao, Age about 46 Years., Occ. Housewife R/o H.No. 6-4-159, Brahminwada, Hanamkonda, Warangal

...Respondent/Defendant

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to **Stay** of all further proceedings in OS No.19 of 2012 on the file of the VII Additional Junior Civil Judge, at Warangal until pending disposal of the CRP.

Counsel for the Petitioner: Mr. PODILA HARI PRASAD, Advocate

Counsel for the Respondent: Mr. I RAMESH, Advocate

The Court made the following: ORDER



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THE HONOURABLE SRI JUSTICE NARSING RAO NANDIKONDA

C.R.P.No.4315 OF 2018

ORDER:

Heard Sri P.Hari Prasad, learned counsel for the petitioner and Sri I.Ramesh, learned counsel appearing for the respondent.

2. The present Civil Revision Petition is filed under Article 227 of the Constitution of India, against the impugned dismissal Docket Order dated 04.05.2018 passed in I.A.No.99 of 2017 in O.S.No.19 of 2012 on the file of the VII Additional Junior Civil Judge at Warangal.

3. Aggrieved by the same, the present petition is filed by the petitioner seeking for an appointment of Advocate Commissioner for the purpose of noting down the physical features to elicit, in which the Survey number of the suit schedule property and the structure is situated with the help of Mandal Surveyor for better adjudication of the matter.

4. The brief facts of the case are that the petitioner/plaintiff has filed the suit against the respondent/defendant seeking a perpetual injunction and another separate application for another ad-interim injunction contending that the



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petitioner/plaintiff is the owner and possessor of the agricultural land out of Sy.No.375/1/4 to an extent of Acs.0.20 guntas situated at Palivelpula village, Hanumakonda Mandal, Warangal District.

5. Learned counsel for the petitioner contended that due to the expansion of Warangal town, he obtained the house construction permission from the Gram Panchayat, Palivelpula to construct three rooms of RCC building in 70 Sq. yards of land in southern side of the suit schedule property and bore well was dug and an electricity connection was obtained for the schedule property and contended that the defendant is interfering in the peaceful possession and enjoyment over the suit schedule property and the same was pending. As such, the petitioner herein filed the present application under Order 26 Rule 9 r/w. Section 151 of Civil Procedure Code seeking appointment of the Advocate Commissioner for the above said purpose on the ground that both the parties are claiming that they have constructed an RCC building in our respective plots and now the question is to be decided whether the house construction made by him is situated in Sy.No.375/1/4 or in



Sy.No.381, as it was the said reason that the petitioner sought for an appointment of the Advocate Commissioner.

6. The respondent has filed the counter affidavit against the averments made by the petitioner and the learned counsel for the respondent contended that the respondent/defendant is in active possession and enjoyment of the suit schedule property to the knowledge of the petitioner and one and all. After the institution of the suit on his application, the Mandal Surveyor has conducted a survey in the disputed land and fixed boundaries in the presence of the parties along with other witnesses and conducted a Panchanama *vide* file No. F/585/2012 and held that the house constructed by him is in Sy.No.381(Old) 374 (New), but not in Sy.No.375/1/4 as claimed by the petitioner.

7. Learned counsel for the respondent further contended that having knowledge about the said survey for a false claim is to mislead the Court and to further drag the matter, the petitioner has filed the petition under reply and is a frivolous and vexatious one deserves to be dismissed and prayed to dismiss the petition.



8. Considering the docket order dated 04.05.2018, the learned trial Court have come to the conclusion that the said suit was coming for trial and the petitioner/plaintiff has chance to place the evidence before the Court to prove his claim and further the learned trial Court came to the conclusion that the Advocate Commissioner cannot be appointed to gather the evidence to prove the case of the parties. The parties should prove their case by leading acceptable and independent evidence. Thus burden lies entirely on the plaintiff to bring convincing and cogent evidence on record before the Court and the prayer of the petitioner is to note down the physical features of the suit property in the present case, and if petition is allowed, it would amount to repeating the survey. As the respondent submitted that he already got surveyed through a Mandal Surveyor regarding the same issue. Thus, allowing petition would be wasting of time. Therefore, as the suit was also coming for trial, let the trial commence and adduce the evidence to prove their claims by both the parties. The Advocate Commissioner can be appointed at any stage of the suit, if evidence put before the Court, creates any ambiguity to



adjudicate the said dispute.

9. Considering the contentions of both the parties, the point for consideration before this Court in the present petition is that "whether there is any necessity for appointment of Advocate Commissioner or not, to bring quietus to the litigation. Whether the learned trial Court has committed any error in dismissing the said application for appointment of Commissioner and the same is liable to be set aside".

10. Having heard the learned counsel for the petitioner and the learned counsel for the respondent, the main grievance of the petitioner before this Court is that the learned trial Court erroneously dismissed the petition and further contended that the appointment of Advocate Commissioner was not for eliciting any evidence or collection of evidence. The request was made to note down the physical features of the suit schedule property and the structure situated with the help of Mandal Surveyor. It is further contended that the learned trial Court did not appreciate the respondent/defendant is claiming suit schedule property with regard to the Sy.No.375/1/4 but the same is situated with the House Plot bearing No.4 and 5 out of



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Sy.No.381 admeasuring 600 Sq. yards situated at Palivelpula village, Warangal District.

11. Learned counsel for the respondent argued and opposed the appointment of the Advocate Commissioner on the ground that no purpose would be served on appointing the Advocate Commissioner, as earlier, on request of the respondent, Mandal Surveyor was appointed and who conducted the survey and also filed his report in addition to the same. Hence, there is no necessity for conducting survey again and the application which is filed is only to attract the matter, and that the petitioner ought to have placed the evidence for proving his contentions before the learned trial Court and there is no necessity for the appointment of Advocate Commissioner and further contended that as per the report, the survey which is placed before this Court shows that there is clear demarcation between Sy.No.375/1/4 and 374 and he also pointed out that as the constructions are made by the respective parties, the question of interference does not arise and it is also the specific contention of the learned counsel for the respondent that said properties are distant and very far from each other and hence,



the question of any claim of neither of the policy does not arise nor there can be any alleged interference. But having considered the fact that the very suit itself is filed for a relief of injunction, contending that there is an interference by the respondent/defendant in respect of the possession and enjoyment of the petitioner/plaintiff over the suit schedule property. Though, it is contended by both the learned counsel that the properties are at some distance and far away from each other, but there is a specific allegations from the petitioner that inspite of the same there is an interference by the respondent/defendant. Though, it is clearly establishes from the record that the land which is claimed by the revision petitioner is said to be in Sy.No.375. Whereas the land plots as per the respondent, are in the said Sy.No.381 i.e., the old number was divided into 22 plots long back and that the said Sy.No.381 renumbered as Sy.No.374. The respondent/defendant herein purchased 2 plots i.e., Plot No.4 and 5 admeasuring 300 Sq. yards each i.e., totally admeasuring 600 Sq. yards.

12. The main grievance of the revision petitioner is that there



is dispute regarding the respondent/defendant interfering in the suit schedule property of the petitioner and in the written statement.

13. On the other hand, it is considered by the respondent/defendant that the defendant is in possession over it and it is false to allege that the plaintiff has applied for electricity connection and has obtained power supply connection to the suit schedule property and that they are prayed for renewal of power charges and there is also a contention in the written statement that the defendant is specifically mentioned that they are improving by the construction over the suit schedule property and the contention of both the parties clearly shows that there is a clear case of dispute as to identification of the location of the suit schedule property and so as to bring quietus to the entire litigation, this Court opines that the appointment of Advocate Commissioner for the purpose of locating the suit schedule property and also noting down the physical features does not amend to correction of evidence rather than identifying the property and locating the suit schedule property would help the Court for proper



adjudication of the matter and the learned counsel for the petitioner also relied upon the judgment cited by this Court in the case of **DONADULU UMA DEVI V/s. GIRIKA KATAMAIAH @ BASAIAH¹**, wherein the said Court relied upon the judgment of the Supreme Court cited in the case of **HARYANA WAQF BOARD V/s. SHANTI SARUP²**, wherein the Apex Court held at Para 12 as under:-

“The question of identity of properties involved in litigation will have same bearing irrespective of the nature of the consequential relief sought for be it for granting permanent injunction or declaration or possession etc., as the case may be. By that reason no differentiation can be made while entertaining the plea of demarcation of the properties concerned”.

14. In view of the above, this Court also is of the view that no prejudice would be caused to the respondent/defendant, if the Advocate Commissioner is appointed only for the limited purpose of locating the suit schedule property and also in

¹ 2013 (1) ALT 548

² (2008) 8 SCC 671



identifying the suit schedule property and as per the sale deeds and documents of both the parties which are submitted, to note down the distance between the properties as claimed by the plaintiff and the defendant and to file their report. Hence, for the said reason, this point is answered accordingly in favor of the petitioner and this Court feels that the finding given by the trial Court appears to be not on correct lines and the same is liable to be set aside.

15. Accordingly, the present Civil Revision Petition is allowed by directing the VII Additional Junior Civil Judge, Warangal now designated as IV Additional Junior Civil Judge, Hanumakonda to appoint any Senior Advocate Commissioner from the bar and fix the fees as prevalent and issue the commission warrant directing the Advocate Commissioner to visit the suit schedule property and also the properties which are claimed by the petitioner/plaintiff and the respondent/defendant to note down the external physical features (boundaries) and the distance between the said properties and file the same within one month from the date of receipt of a copy of the commission warrant. If required, the



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Advocate Commissioner may take assistance of the Mandal Surveyor by making an appropriate application to the concerned Authority or may take the help of licensed Surveyor. There shall be no order as to costs.

Miscellaneous applications, if any, pending in this appeal shall stand closed.

Sd/- P. PONNA KRISHNA
ASSISTANT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The VII Additional Junior Civil Judge at Warangal.
2. One CC to Mr. PODILA HARI PRASAD, Advocate [OPUC]
3. One CC to Mr. I RAMESH Advocate [OPUC]
4. Two CD Copies



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HIGH COURT

DATED: 25/10/2025

ORDER

CRP.No.4315 of 2018



Accordingly, the Civil Revision Petition is Allowed

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