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T. Venkat Ramdev Vs. G. Arjun Reddy and Others

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Court : Andhra Pradesh

Decided On : Dec-14-2012

Judge : Hon'Ble Sri Justice G. Krishna Mohan Reddy

Appellant : T. Venkat Ramdev

Respondent : G. Arjun Reddy and Others

Advocate for Def. : Sri. A.K. Jayaprakash Rao Counsel

Judgement :

HON'BLE SRI JUSTICE G.

KRISHNA MOHAN REDDY C.R.P.No.6281 o

14. 12-2012 T.

Venkat Ramdev G.

Arjun Reddy and others Counsel for the petitioner: Sri A.K.

Jayaprakash Rao Counsel for Respondents: None appeared : ?Cases referred:

1. 2008 (1) ALD 46.ORDER: This Civil Revision Petition is filed under Article 227 of the Constitution of India aggrieved by order dated 16-08-2012 passed in I.A.No.126 of 2012 in O.S.No.535 of 2011 on the file of the Court of III Additional Junior Civil Judge, Ranga Reddy District at L.B.

Nagar (I.A).

The petitioner herein is the respondent in the I.A.

and plaintiff in the suit whereas the respondents herein are the petitioners in the I.A.

and defendants in the suit.

For convenience sake, I refer the parties as arrayed in the I.A.

The respondent filed the suit against the petitioners for permanent injunction in respect of the suit schedule property.

The petitioners (defendants) filed the I.A.

under Order XXVI Rule 9 C.P.C.

for appointment of Advocate Commissioner to survey the lands of themselves and the respondents with the help of Assistant Director, Survey and Settlement, Ranga Reddy District.

His plea in the I.A.

is that originally one G.

Venkateswara Rao S/o G.

Gangaiah was the absolute owner of Ac.4-15 guntas in Sy.No.151 situated in Bhagayat Village, Uppal Mandal and Municipality, Ranga Reddy District.

He executed an unregistered sale deed dated 06-04-1980 in favour of (i) Smt.

K.

Susheela in respect of Ac.1-05 guntas, (ii) Smt.

N.

Chittamma in respect of Ac.1-05 guntas, (iii) Sri Ch.

Veera Reddy in respect of Ac.1-05 guntas and (iv) Sri Ch.

Janga Reddy in respect of Ac.1-00 guntas in consequence of which he delivered the said extents to them respectively following which they have been in possession and enjoyment of the property.

Thereafter the said purchasers approached the Mandal Revenue Officer, Uppal Mandal (MRO) for the regularization of their purchases.

Thereby the MRO vide ROR Proceedings in File Nos.B/RoR/25/89 and B/RoR/26/89 both dated 23-02- 1990 incorporated their names in the relevant revenue records and issued pattedar passbooks and title deeds in their favour.

Accordingly they paid necessary amounts.

It is further according to them that the first of them purchased one of the four extents and further sold that extent under registered agreement of sale through GPA dated 31-07-2007 and delivered the possession of the property whereas accordingly the third of them has been in possession and enjoyment of the property.

Further the said Janga Reddy, who purchased the said extent of Ac.1-00 guntas, settled the property in favour of his daughter i.e., the third of them under gift settlement deed dated 31-07-2007 in consequence of which the third of them has been in possession and enjoyment of the property.

Further Smt.

N.

Chittamma died on 29-04-1995 following which her only son N.

Hanumantha Rao has been in possession and enjoyment of her property.

Further Smt.

K.

Susheela died on 22-09-2005 having already settled her property in favour of her son i.e., the fourth of them.

It is further according to them that the respondent who is claiming to be the owner of the suit schedule property has been trying to encroach their property in the process of which he filed the suit and obtained ex parte orders.

Therefore, their plea is that it is necessary to localize the properties so that they could enjoy their respective properties as per law.

On the ground that inspite of giving necessary opportunity the respondent failed to take necessary measures, the Court below forfeited the right of the respondent (plaintiff) to file the corresponding counter, and after hearing the counsel for the petitioners, allowed the I.A.

Learned counsel for the petitioner (plaintiff) would contend that in a suit for permanent injunction, the contention of the parties about their possession of the suit schedule property need to be appreciated with reference to the evidence to be adduced either at the interlocutory stage or final stage.

The appointment of Commissioners at the initial stage of the suit would lead to gathering evidence.

Hence it was not proper to appoint the Commissioner as prayed for.

In that context he has relied upon the decision of this Court reported in GANGAVARAPU HANUMANTHA RAO @ ANJANEYULU v.

BATTIGIRI RAMULU 1

Therefore, it is to be seen as to whether the appointment of Advocate Commissioner for the said purpose is proper or not.

The decision cited above relates to appointment of Commissioner in a suit for perpetual injunction to identify the property scheduled therein and note its physical

features and file report which was opposed by the other party on several grounds.

Originally the Court below therein dismissed the application having undertaken extensive discretion and placing reliance upon several decisions.

In fact prior to that also an application was filed for the same relief which was dismissed, but that fact was not mentioned in the petition subsequently filed for the same purpose.

There is no reference as to whether there was any identity dispute of the lands of both parties.

Under those circumstances, this Court observed as under: "Filing of applications for appointment of Commissioners under Order 26 rule 9 C.P.C., in the suits for perpetual injunction, cannot be treated as a matter of routine.

The contentions of the parties, as to the possession over the suit schedule property, need to be appreciated, with reference to the evidence, that may be adduced, be it at the interlocutory or the final stage.

The appointment of Commissioners, at the initial stages, is prone to be treated as step to gather evidence.

Therefore, the Courts discourage the filing of applications under Order 26 Rule 9 C.P.C.

in the suits for injunction, at the initial stages." On examining the relevant factors, it appears that the circumstances, which are found in the above case, are quite different from the circumstances concerned with the case on hand.

This is clearly a case where the petitioners approached the Court for the appointment of Commissioner on the ground that they got lands different from the suit schedule property whereas the respondent under the guise of claiming his property involved in encroaching their properties.

Thereby it is categorical that by appointing an Advocate Commissioner for the purpose of visiting the suit property and localizing the extents in question with the

support of a qualified surveyor, the controversy raised in the suit would be settled once for all.

Any amount of evidence that may be adduced before the Court in connection with the controversies raised will not be suffice to come to any conclusion with regards to the localization of the properties.

The concerned revenue authorities are the proper persons to identify the properties taking necessary measures.

If the plea of the petitioners is denied, the ambiguity prevails to come to a definite conclusion with regards to the demarcation of the extents respectively by reason of which it is difficult to dispose of the suit properly and in the best interest of the parties.

In the facts and circumstances of this case, it cannot be visualized that by doing so, there is every possibility of the petitioners getting undue advantage in one way or the other.

Viewed from any angle, upholding the claim of the petitioners is quite proper.

I do not find any reason to interfere with the order passed by the Court below thereby.

In the result, the Civil Revision Petition is dismissed.

No costs.

Consequent upon the dismissal of the C.R.P., miscellaneous petitions pending, if any, shall stand closed.

_____ G.

KRISHNA MOHAN REDDY, J Date:

14. 12-2012

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