

(2023) 03 TEL CK 0022

High Court For The State Of Telangana:: At Hyderabad

Case No: Civil Revision Petition No. 3079 Of 2022

Rachakonda Mallamma

APPELLANT

Vs

Rachakonda Ramesh

RESPONDENT

Date of Decision: March 6, 2023**Acts Referred:**

Code Of Civil Procedure, 1908 " Section 151, Order 26 Rule 9

Citation: (2023) 03 TEL CK 0022**Hon'ble Judges:** P. Madhavi Devi, J**Bench:** Single Bench**Advocate:** Gandyadapu Rajesham, Sandeep Kumar Bodla**Final Decision:** Dismissed

Judgement

1. This Civil Revision Petition is filed by the petitioners against the order dt.18.11.2022 passed by the Court of the Principal Junior Civil Judge,

Ramannapet in I.A.No.433 of 2022 in O.S.No.62 of 2010.

2. O.S.No.62 of 2010 was filed by the plaintiff/respondent seeking permanent injunction against the defendants/petitioners. After filing of the written

statement, the defendants filed I.A.No.433 of 2022 under Order 26 Rule 9 read with Section 151 CPC with a prayer to appoint an Advocate

Commissioner for localization of the subject matter of the suit and for its measurements with the help of Mandal Surveyor and also to note down its

features. The Court of the Principal Junior Civil Judge, Ramannapet vide order dt.18.11.2022 has dismissed the I.A. and therefore, the present C.R.P.

is filed by the defendants in the suit.

3. Learned counsel for the petitioners/defendants, Sri Gandyadapu Rajesham, submitted that the plaintiff has sought permanent injunction in respect of

the suit schedule property, but the boundaries mentioned in the suit are not correct and the boundaries mentioned therein are the boundaries of the

defendants' property. It is submitted that the same has been submitted in the written statement filed by the defendants/petitioners herein and since

it was felt that appointment of an Advocate Commissioner is necessary for inspection and localization of the subject property and also to note down

the physical features thereof, an application for the same was filed by the defendants. It is submitted that the lower Court has dismissed the

application by observing that the petition is filed only to drag on the matter without any bonafide reason and that the petitioners did not specify the

boundaries in their written statement and it is for the first time that the petitioners are alleging that their land is bounded by such and such property and

the basis for such contention is a simple unregistered sale deed which did not contain any boundaries. It is submitted that the Court has dismissed the

application without verifying the material available on record. In support of his contentions that appointment of Advocate Commissioner is necessary

for localisation of the property, he also placed reliance upon the following two decisions.

(1) T.Venkat Ramdev Vs. G. Arjun Reddy and others 2013 (2) ALD 724.

(2) Faimida Begum and another Vs. Shaik Sahbbar Ahmed and others 2021 (5) ALD 328 (TS).

4. The learned counsel for the respondent, Sri Sandeep Kumar Bodala, on the other hand, supported the order of the lower Court and submitted that

the plaintiff was in possession of the subject land since the date of purchase in the year 2007 and when the petitioners herein have tried to interfere

with his possession, he has filed the suit for permanent injunction and in the year 2010, the plaintiff had sought for survey and appointment of

Advocate Commissioner for demarcation of the boundaries of the suit land. However, the defendants had opposed and obstructed the same and in

fact had attacked the plaintiff and caused injuries for which a criminal case has been registered and the petitioners/defendants have also been

convicted for the said charges. It is submitted that since the petitioners herein had opposed appointment of Advocate Commissioner at that time, filing

of the present petition at this stage is nothing but to drag on the present proceedings. It is submitted that the petitioners are relying upon the sale deed

which is not a registered document, whereas the plaintiff is relying upon a registered sale deed and the allegation that the boundaries mentioned in the

registered sale deed are not correct and that the boundaries with regard to the land in the simple sale deed are correct, is not sustainable. Therefore,

according to him, the lower Court has properly appreciated the facts of the case before dismissing the I.A. and hence, the CRP is liable to be

dismissed.

5. The learned counsel for the respondent has also relied upon the following case law in support of his contentions.

(1) K.M.A. Wahab and 5 others Vs. Eswaran and another 2008 (3) CTC 597.

(2) Ravi and others Vs. V. Shanmugam 2020 SCC OnLine Mad 6779.

6. Having regard to the rival contentions and the material on record, this Court finds that the petitioners herein are defendants in the suit and the

respondent is the plaintiff. The plaintiff had filed the suit for permanent injunction on the basis of a registered sale deed, whereas, the defendants have

claimed to be in possession of the property on the basis of an unregistered sale deed. The case of the petitioners is that the boundaries mentioned in

the suit are not matching with the property and the boundaries mentioned by the petitioners herein, in the written statement and also in the I.A. for

appointment of an Advocate Commissioner are correct boundaries and therefore, if an Advocate Commissioner is appointed, it would be possible to

identify the suit schedule property. This Court finds that the plaintiff had earlier applied for survey of the land and it was objected to by the petitioners

herein and a criminal case has also been filed and the petitioners herein were convicted. In a suit for bare injunction, all that is to be seen is whether

the petitioners are in possession over the suit schedule property. That can be proved by leading evidence and appointment of an Advocate

Commissioner to gather evidence is not permissible. Further, it is also noticed that the trial is at the far end and the evidence of defendants 1 and 2 has already been recorded.

7. In the decisions relied upon by the learned counsel for the petitioners, this Court has held that by appointment of an Advocate Commissioner for the

purpose of visiting the suit property and localising the extents in question with the support of a qualified surveyor, the controversy raised in the suit

would be settled once and for all and therefore, appointment of an Advocate Commissioner is justified. It was further held that the object of appointing

an Advocate Commissioner is to survey the land of the parties, but not to ascertain or cause any enquiry as to who is in possession of which property

and therefore, it does not amount to collection or fishing of evidence.

8. In the decisions relied upon by the learned counsel for the respondent, the Hon'ble Madras High Court has considered similar situation and has

held that a Court may appoint a Commissioner in any suit where it deems a local investigation to be requisite for the purpose of elucidating any matter

in dispute and that the Advocate Commissioner cannot be appointed to gather evidence as to who is in possession of the suit schedule land. It was

further observed that the contention that no prejudice will be caused to the other side by appointment of an Advocate Commissioner, is not at all a

relevant factor for appointment of an Advocate Commissioner. Further, in the case of Ravi and others Vs. V. Shanmugam (2020 SCC OnLine Mad

6779 supra), the Madras High Court has held that in a suit for bare injunction, appointment of an Advocate Commissioner cannot be ordered either to

prove the possession or to collect the evidence.

9. In the case before this Court also, the plaintiff as well as the defendants are claiming the same property to be under their possession and while the

plaintiff is relying upon a registered sale deed, the defendants are relying upon an unregistered simple sale deed. The defendants have also alleged that

the registered sale deed is sham and bogus. In such circumstances, the veracity of the registered document and also the boundaries mentioned therein

would have to be proved by the defendants by leading evidence. The presumption to be drawn in the case of a registered document is that it is a valid

and genuine document. Any assertion or allegation to the contrary would have to be proved and the onus of proving the same would be on the person

making such an allegation. By appointment of an Advocate Commissioner, the intention of the defendants seems to be for collection of evidence.

10. In view of the same, the order of the Court of Principal Junior Civil Judge, Ramannapet in dismissing I.A.No.433 of 2022 in O.S.No.62 of 2010

dt.18.11.2022 cannot be found fault with.

11. The Civil Revision Petition is accordingly dismissed. No order as to costs.

12. Pending miscellaneous petitions, if any, in this CRP shall also stand dismissed.