
(2014) 04 AP CK 0112

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 162 of 2014

Nambada Varaha Narasimhulu

APPELLANT

Vs

Karanam Dalamma

RESPONDENT

Date of Decision : 23-04-2014

Acts Referred:

Citation : (2014) 4 ALD 610 : (2014) 6 ALT 94

Hon'ble Judges : Challa Kodanda Ram, J

Bench : Single Bench

Advocate : N. Siva Reddy, Advocate for the Appellant; B.S. Shivaji, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Challa Kodanda Ram, J.—This Civil Revision Petition is directed against the order dated 03.06.2013 passed in I.A. No. 1903 of 2012 in O.S. No. 144 of 2010 whereby the learned Principal Junior Civil Judge, Vizianagaram, allowed the interlocutory application filed by the defendants by appointing an Advocate Commissioner to localize the plaint schedule vacant site with the help of Municipal/Government Surveyor and note down in which survey number the plaint schedule property is situated.

2. The learned counsel for the petitioner-plaintiff while placing reliance upon the judgment of this Court reported in A. Gopal Reddy Vs. R. Subramanyam Reddy and Another, submits that it is well settled that the plaintiff will have to succeed on his own merits. It is further submitted that if at all the question of appointing Advocate Commissioner arises it would arise only at the time of trial and the site over which the plaintiff is claiming right is well-demarcated and delineated by the boundaries and there is no dispute with regard to the identity of the property, as such, the appointment of an Advocate Commissioner at the interlocutory stage is not justifiable and the impugned order is liable to be dismissed.

3. On the contrary, the specific case of the respondents-defendants is that the

house-site that is being claimed by the petitioner is in the lay-out which has been carved out in Sy. No. 53/2C besides the land in Sy. Nos. 55/2B, 4 and 5 and the same is evident from the very sale deed on which reliance is placed by the petitioner, whereas, the respondents-defendants are the owners of Ac.0.92 cents in Sy. No. 53 (old), Sy. No. 53/4 (new), and in that view of the matter, there is a serious dispute with respect to the identity of the property and the same can be resolved only by the Government Surveyors and with the aid of the Court. It is further submitted that identification of survey number in which the property in question is exactly located would resolve the dispute between the parties as it is the case of both the parties that they are not claiming right over the property situated in the same survey number.

4. Having considered the rival submissions, this Court is of the view that it cannot be inferred that the appointment of Advocate Commissioner/Surveyor for specifically localizing the plaint schedule vacant site and identifying in which survey the disputed property is located cannot be done at the instance of the parties to the dispute. As a matter of fact, the only method by which the identification of the property can be made is by way of ordering conduct of survey particularly when the dispute between the parties is with regard to which survey number the disputed property is situated in. The judgment relied upon by the learned counsel for the petitioner does not concern the nature of dispute raised in the present case but it speaks of the issue with regard to the appointment of Advocate Commissioner for noting down physical features of the disputed property which was held to be amounted to gathering evidence and as such not permissible. On the other hand, the judgment relied on by the learned counsel for the respondents-defendants reported in Smt. Donadulu Uma Devi Vs. Girika Katamaiah @ Basaiah, M. Sreenivasulu and Smt. K.B. Rajeswari, is strictly on the point and supports the case of the respondents.

5. In view of the law laid down by this Court in Donadulu Uma Devi case (2nd cited supra), the order of the learned Principal Junior Civil Judge, Vizianagaram, in my opinion, is perfectly justified and does not warrant any interference by this Court.

6. Hence, the Civil Revision Petition is devoid of merits and accordingly dismissed. No order as to costs.

7. As a sequel to the dismissal of the Civil Revision Petition, Miscellaneous petitions, if any pending, shall stand disposed of as infructuous.