

(2013) 09 AP CK 0090

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3244 of 2010

Shaik Mahammad Rafi

APPELLANT

Vs

The Correspondent of Saint Francis Integrated English
Medium School

RESPONDENT

Date of Decision : 27-09-2013

Acts Referred:

Citation : (2014) 1 ALD 537 : (2014) 2 ALT 534

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : Nuthalapati Krishna Murty, for the Appellant; P.V. Sanjeeva Rao, for the Respondent

Final Decision : Disposed Off

Judgement

B. Chandra Kumar, J.—The Civil Revision Petition is filed by the petitioner/plaintiff questioning the order dated 08.07.2010 passed by the learned Junior Civil Judge, Venkatagiri, SPSR Nellore District in I.A. No. 220/2008 in O.S. No. 57/2008, vide which, the learned Judge appointed an Advocate Commissioner on a petition filed by the respondent/defendant to inspect the suit schedule property and to note down the physical features. Heard both sides.

2. The brief facts of the case are as follows:

The petitioner herein is the plaintiff. He filed the suit against the defendant for permanent injunction. The plaintiff claims that his father purchased an extent of Ac. 027 cents of dry land from his Vendor Salapakshi Mangaiah under an agreement of sale dated 20.07.1976 and thereafter, the father of the plaintiff raised rain-fed crops for some years and later started brick kiln business on the western part of the suit land and run the said business between 2000 to 2005. The father of the plaintiff in the meanwhile planted teak trees on the eastern part of the suit land and by the date of filing of the suit, they are aged about 5 years and approximately there are 60 teak trees in the suit land, and there was stone

fencing on the eastern side of the suit land. On his application, the Tahsildar, Venkatagiri regularized the suit land under Record of Rights Act, 1971 in the name of father of the plaintiff on 05.01.2008 and his name was mutated in the revenue records, and the name of the plaintiff was also shown as enjoyer of the suit land. Due to old age, the father of the plaintiff had executed a gift settlement deed in favour of the plaintiff on 27.08.2007 and delivered possession of the suit land to the plaintiff. It is the case of the plaintiff that when the plaintiff tried to dig a bore well in the suit land, the defendant and his men objected and they tried to dispossess the plaintiff from the suit land and proclaimed that they would occupy the suit land. The plaintiff has given specific boundaries to the suit schedule land.

3. The defendant filed written statement. The case of the defendant is that the defendant's institution has been in possession and enjoyment of an extent of Ac. 0.20 cents of suit schedule land since 1979 and remaining schedule land since 1994. The teak trees were raised by the defendant, which are more than 15 years old. The defendant also constructed two rooms and laid pucca road in the northern end of the suit land as way to their Hospital about 15 years back. It is contended that the father of the plaintiff has nothing to do with the plaintiff schedule property. It is further case of the defendant that one Salapakshi Eswaraiah sold Ac. 0.20 cents out of Ac. 0.30 cents with specific boundaries, which corresponds to Sy. No. 108/12 of Periyavrama village. It is further case of the defendant that though it is mistakenly mentioned in pattas the survey number as 108/11, but in fact the houses of vendors of the defendant are in Sy. No. 108/12.

4. It appears that initially the Court below granted ad interim injunction in favour of the plaintiff in I.A. No. 208/2008, and aggrieved by the same, the defendant carried the matter in appeal and the lower appellate Court vacated the said injunction order.

5. As far as this revision petition is concerned, the defendant filed I.A. No. 220/2008 seeking to appoint an Advocate Commissioner to inspect the suit land, take measurements of the same and note down the physical features, rooms, trees and stones existing in it and its proximity to the other site of the plaintiff and other features that may be shown at the time of inspection. The Court below by the impugned order allowed the said application.

6. Sri N. Krishna Murthy, learned counsel for the petitioner/plaintiff submitted that the Court below failed to see that the suit is filed by the plaintiff and it is for him to establish his lawful possession over the suit schedule property by the date of filing of the suit. It is further submitted that the defendant cannot file an application to appoint an Advocate Commissioner to gather evidence to show that he is in possession of the schedule property and in the above circumstances, the appointment of an Advocate Commissioner is illegal. It is further submitted that the Court below has also failed to show that the defendant has not filed any document to show their title and possession to the suit schedule property.

7. Sri P. Sanjeevarao, learned counsel for the respondent/defendant has taken me to the averments of the plaint and written statement and submits that it cannot be said that the appointment of an Advocate-Commissioner by the Court below is for the purpose of gathering evidence. It is further submitted that, the Court below may appoint an Advocate-Commissioner on an application filed by either plaintiff or defendant to know the physical features of the disputed property.

8. The only point that arises for consideration in this revision petition is whether the impugned order of appointment of an Advocate Commissioner by the Court below is sustainable.

Point:

Order 26 Rule- 9 CPC reads as follows:

Commissions to make local investigation:- In any suit in which the Court deems as local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court;

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the same shall be bound by such rules.

Thus, it is clear that a Commissioner may be appointed where the Court deems as local investigation to be requisite or proper for the purpose of elucidating any matter in dispute.

9. Sri N. Krishna Murthy, learned counsel for the petitioner/plaintiff may be right in saying that it is a suit filed by the plaintiff and the plaintiff may succeed or fail on the basis of the evidence produced by him. Normally, a plaintiff in the suit applies for appointment of an Advocate-Commissioner. In appropriate cases, however, a defendant may make such an application. The Court may suo moto appoint a Commissioner. There is no provision which prevents a defendant from applying for appointment of a Commissioner. It is settled law that the Court is empowered to appoint an Advocate Commissioner to note down the physical features of a disputed property. In most of the cases, the physical features of a disputed property collected by the Advocate Commissioner would certainly help the Court to appreciate the rival contentions of the parties. Where in a given case, the Court feels that the report of a Commissioner may help the Court in deciding the question in controversy before it relating to identification, location, measurement etc. of the property in dispute, it may appoint an Advocate-Commissioner. The measurement of disputed property some times helps the Court to understand whether there is any encroachment of the disputed land. The Court has to consider whether the report of the Commissioner enables the Court to properly and correctly understand the issue, asses the evidence on

record.

10. In view of the above, as far as the noting of physical features are concerned, I am of the view that the order impugned in this revision can be sustained, however, with slight modification. The order of the Court below is modified as under:

The Advocate Commissioner shall only note down the existing physical features of the suit schedule property, of course, if necessary, by taking measurements and file his report.

11. Accordingly, the Civil Revision Petition is disposed of. No order as to costs. Interim order dated 27.07.2010 shall stand vacated and pending miscellaneous petitions, if any, shall stand closed in consequence.