

(2014) 03 AP CK 0145

In the Andhra Pradesh High Court

Case No : Civil Revision Case No. 4709 of 2013

Velaga Narayana and Others

APPELLANT

Vs

Bommakanti Srinivas and Others

RESPONDENT

Date of Decision : 12-03-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 26, 145
Constitution of India, 1950 — Article 227

Citation : (2014) 3 ALD 605 : (2014) 4 ALT 152

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : Kowturu Vinaya Kumar, Advocate for the Appellant; R.K. Chitta, Advocate for the Respondent

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—This Civil Revision Petition is filed under Article 227 of Constitution of India against the order dated 22-10-2013 in I.A.No. 897 of 2013 in O.S.No. 467 of 2012 on the file of the II Additional Junior Civil Judge, Warangal.

2. Heard the learned counsel appearing for the petitioners/plaintiffs and the learned counsel appearing for the respondents/defendants.

3. The brief facts of the case are that the petitioners/plaintiffs filed a suit for bare injunction in respect of small pieces of land covered by Sy.No. 257/D of Thimmapur village against the respondents/defendants. According to them, they purchased the said lands under registered sale deeds and have been in possession and enjoyment of the said lands.

4. The respondents defendants contended in the suit that the plaint schedule properties have not been properly described in the schedule annexed to the plaint and that the petitioners wrongly claimed the lands which are in possession of the defendants.

5. Earlier, the petitioners filed I.A.No. 1822 of 2012 for appointment of commissioner for localizing the plaint schedule lands, but the same was dismissed on the ground that the petitioners suppressed the criminal cases filed in Crime No. 144 of 2011 and Crime No. 66 of 2011. However, there is no adjudication on merits as to whether appointment of commissioner is necessary or not.

6. Again the petitioners filed I.A.No. 897 of 2013 for appointment of commissioner to survey the land in Sy.No. 257 and 280 of Thimmapur village, Hanamkonda Mandal, Warangal District with the assistance of Assistant Director, Survey and Land Records, Warangal to localize the schedule lands. The said petition was dismissed by the learned trial Court on the ground that already survey was conducted by the Inspector of Survey and Land Records, where under it was found that the lands of the petitioners are in Sy.No. 280 of Thimmapur village, but not in Sy.No. 257/D of Thimmapur village. However, the petitioners are disputing the said report.

7. Subsequently, as there was a dispute regarding the identity of the lands covered by Sy. Nos. 257/D and 280 of Thimmapur village, the Tahsildar, Hanamkonda addressed a letter to the Assistant Director, Survey and Land Records on 16-11-2012 to conduct resurvey by the Deputy Inspector of Survey and Land Records.

8. According to the petitioners, the Mandal Surveyor without conducting proper survey, wrongly reported that the plots of the plaintiffs are in Sy. No. 280 of Thimmapur village. The petitioners themselves got demarcated the lands with the assistance of Inspector of Survey and Land Records, which clearly establishes that their plots are in Sy. No. 257/D only. Thereafter the Tahsildar promulgated the orders u/s 145 of C.P.C., in respect of the land in Sy. Nos. 257 and 280 of Thimmapur village.

9. It is submitted by the learned counsel appearing for the revision petitioners that unless survey is conducted under the supervision of a commissioner appointed by the Court, the dispute between the parties as to the identity of the subject matter cannot be resolved, therefore, appointment of commissioner for conducting survey of the land in Sy. Nos. 257 and 280 with the assistance of Assistant Director of Survey and Land Records is essential.

10. On the other hand, the contention of the respondents/defendants is that as the petitioners filed the suit for injunction simpliciter, they have to establish their case by adducing sufficient evidence showing their possession over the property and they cannot collect some evidence by seeking appointment of a commissioner.

11. Here is a case, wherein, there is a dispute with regard to the identity of the subject matter of the suit. Though there is a report by the Mandal Surveyor, the said report is disputed by the petitioners and they assert that the survey has to be conducted in the presence of a commissioner appointed by the Court in the

pending suit.

12. The Tahsildar also addressed a letter to the Assistant Director of Survey and Land Records, Warangal requesting to conduct resurvey by the Deputy Inspector of Survey and Land Records. Therefore, a genuine dispute exists between the parties in relation to the identity of the subject matter of the suit. If the petitioners seek appointment of a commissioner for demarcating the land, in the aforesaid circumstances, I do not think that it is with a view to fish out some evidence. They are claiming title and possession in respect of the plaint schedule plots under registered sale deeds. It is not the case of the respondents/defendants that the petitioners do not have any land at all. Their contention is that their land is elsewhere and they are falsely claiming the land of the respondents/defendants. Thus, there is a genuine dispute in relation to the identity of the subject matter of the suit. The said dispute can be completely and effectively resolved only by appointment of commissioner.

13. Under Rule of Order 26 in any suit in which the Court deems a local investigation is necessary or proper for the purpose of elucidating any matter in dispute, it can issue a commission. Though issuing commission is discretionary, the Court has to exercise discretion in an appropriate and judicious manner. The purpose and object of local investigation under Rule 9 is to have the evidence from the spot itself to have a correct and proper understanding of the dispute between the parties. The local investigation report submitted by the commissioner enables the Court to make a correct assessment of evidence on record. When the Court is of the opinion that the material on record requires elucidation, it would be just and reasonable to issue a commission for the said purpose. A commission at the instance of one of the parties to find out as to who is in possession of the property cannot be issued as it enables the party seeking appointment of commissioner to collect or gather evidence. But, where there exists a dispute regarding suit property, the Court has to necessarily issue a commission with the assistance of a surveyor, otherwise, it would be highly difficult for the Court to completely and effectively resolve the dispute and issuing such commission would not amount to collection of evidence. Commission for the said purpose can be issued prior to or after the parties let in their evidence.

14. In the instant case, I am of the view that the appointment of commissioner for the purpose of localizing the suit lands is necessary and the learned trial Court erroneously rejected the request of the petitioners for appointment of the commissioner.

15. Therefore, the order passed by the learned trial Court is set aside. The trial Court is directed to appoint a commissioner to localize the suit lands with the assistance of the Assistant Director of Land Records.

16. Accordingly, the Civil Revision Petition is allowed without any order as to costs. The Miscellaneous Petitions pending if any shall stand closed.