

HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

CIVIL REVISION PETITION No.1705 of 2022

Between:

Kandukuri Rajababu, S/o late Veerraju, aged 56 years, Occupation: Employee, resident of D.No.44-15-84, Andhra Nagar, By-pass Road, Rajamahendravaram, East Godavari District and another.

... Petitioners/Plaintiffs.

Versus

The Rajahmundry Municipal Corporation, Rep. by its Commissioner, Rajamahendravaram.

... Respondent/Defendant.

Counsel for the petitioners : Sri K.V.S.S. Prabhakara Rao
Counsel for respondent : ---

ORDER

Plaintiffs in the suit filed the above revision under against the docket order dated 28.07.2022 in I.A.No.844 of 2017 in O.S.No.513 of 2016 on the file of learned Principal Senior Civil Judge, Rajamahendravaram.

2. Plaintiffs filed suit O.S.No.513 of 2016 seeking declaration that the plaintiffs have a right of access to Bypass road from the plaint schedule property from every inch of its width of plaint schedule site on its west and the defendant is

not entitled to make any construction in between the plaintiff schedule property and the western side Bypass road in any manner and for consequential permanent injunction restraining the defendants from interfering with plaintiffs' right of access to the western side Bypass road from the plaintiff schedule property from every inch of its width on the west either by making any constructions in between the plaintiff schedule property and Bypass road located on its west or otherwise etc.

3. Plaintiffs in the plaint contended that to the west of plaintiff schedule property there is a 60 feet wide road known as Bypass road and the said Bypass road is only access to the plaintiff schedule property and the schedule property does not have any other access except the western side Bypass road. If the defendant is allowed to make any constructions there will be no ventilation and there is no pathway to the western side Bypass road. Plaintiff is using the main entrance towards western side to access the Bypass road.

4. Pending the suit I.A.No.844 of 2017 to appoint an advocate commissioner to note down the physical features

existing thereon and also to note down measurement of the schedule property.

5. In the affidavit filed in support of the petition, plaintiffs reiterated the contents of the plaint. 1st Plaintiff contended that his father executed a Will dated 18.11.1991 and item No.1 of plaint schedule property was allotted to 1st plaintiff and item No.2 of plaint schedule property was allotted to 2nd plaintiff. Subsequently, item No.1 of schedule property was gifted to 1st plaintiff under a gift deed dated 06.07.1998 and item No.2 of schedule property was gifted to father of 2nd plaintiff under a gift deed dated 03.04.2000 and 2nd plaintiff claimed item No.2 of schedule property by virtue of gift deed dated 01.12.2006.

6. Trial Court by docket order dated 28.07.2022 dismissed the application. Against the said order, the present revision is filed.

7. Sri K.V.S.S. Prabhakara Rao, learned counsel for petitioners would submit that respondent is trying to construct structure quite opposite to the petitioners' house by closing western side entry from Bypass road to petitioners'

house. He would also submit that suit is filed for declaration to decide the issue of easementary rights and hence, noting down the physical features is necessary and report of the advocate commissioner would help the Court in deciding the dispute judiciously.

8. Now, the points for consideration are:

1) Whether the order of the Court below suffers from any illegality warranting interference of this Court under Article 227 of the Constitution of India?

2) Whether the Court below failed to exercise jurisdiction vested with it?

9. Suit is filed for declaration that the plaintiffs are having right of access to Bypass road from the schedule property. According to the plaintiffs, Bypass road is situated towards western side of the schedule property and that is the only road to reach their house. Plaintiff is not disputing that land in between plaint schedule property and Bypass road belongs to the respondent-Municipality.

10. The object of local inspection under Order XXVI Rule 9 of CPC is to collect evidence at the instance of the party who

relies upon the same and which evidence cannot be taken in the Court but could be taken only from its peculiar nature on the spot. When the evidence will necessitate that part of the evidence will elucidate a point, which may otherwise be left in doubt or ambiguity on record. Advocate Commissioner, in effect, is a projection of the Court appointed for a particular purpose. The report of the Commissioner within the suit shall form part of the record. The local investigation is the best way to find out the possession when there is dispute regarding identity of the property. Under the guise of local investigation, party who is making application will not be allowed to collect the evidence. The Court must keep these factors in mind while ordering or rejecting application for appointment of Advocate Commissioner basing on facts of each case.

11. In the case on hand, there is no dispute regarding identity or location of plaint schedule property and the property belonging to the respondent. Hence, noting down the physical features does not arise. The plaintiffs have to plead and prove that they have no other access to reach their house, except the western side Bypass road. There is also no dispute regarding the measurements of the property. It is not

the case of plaintiffs that defendant encroached their property. In the absence of any dispute regarding encroachment or overlapping of property, relief sought for by the plaintiff to note down the physical features is nothing but collection of evidence and the same is impermissible. In fact, trial Court observed that there is no dispute regarding the physical features and measurements of the schedule property. In view of the same, this Court finds no illegality in the docket order of the Court below in declining to appoint advocate commissioner. Hence, this revision is liable to be dismissed.

12. Accordingly, this Civil Revision Petition is dismissed at the stage of admission. No costs.

As a sequel, all the pending miscellaneous applications shall stand closed.

SUBBA REDDY SATTI, J

5th December, 2022

PVD

In the absence of any dispute regarding encroachment or overlapping of property, relief sought for by the plaintiff to note down the physical features is nothing but collection of evidence and the same is impermissible hence appointment of "Advocate Commissioner" was declined by trial court which is valid and hence "Civil revision petition" was dismissed