**THE HONOURABLE SMT. JUSTICE M.G.PRIYADARSINI**

**Civil Revision Petition Nos.1111 and 1112 OF 2020**

**COMMON ORDER:**

Aggrieved by the common order dated 23.03.2020 (hereinafter will be referred as 'impugned order') in C.M.A.Nos.52 and 53 of 2019 on the file of learned II Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, the plaintiff in O.S.No.125 of 2019 and defendant No.3 in O.S.No.74 of 2019 filed the present Civil Revision Petitions to set aside the impugned order.

2. For the sake of convenience, hereinafter, the parties will be referred as per their array before the learned II Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar.

3. Since both the Civil Revision Petitions are arising out of common order and since the subject matter in both the cases is one and the same, this Court is inclined to pass common order in both the Civil Revision Petitions.

4. The brief facts of the case as can be seen from the record available before this Court are that one G. Surender Reddy filed O.S.No.125 of 2019 on the file of learned I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar against

defendant Nos.1 and 2 (Metta Chandrasekhara Rao and Metta Lakshmi) for perpetual injunction in respect of plot No.25/A admeasuring 361 square yards in sy.No.9/1/F situated at Ward No.1, Block No.13, Alkapuri Colony, Saroornagar Village and Mandal. Along with the suit the plaintiff has filed I.A.No.151 of 2019 seeking ad interim injunction under Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, wherein the Court was pleased to grant interim orders on 15.02.2019. Thereafter, the said petition was allowed on merits 06.06.2019 making the interim orders passed on 15.02.2019 as absolute till disposal of the main suit. Aggrieved by the same, the defendants in O.S.No.125 of 2019 have preferred CMA No.53 of 2019 on the file of learned II Additional District Court, Ranga Reddy District at L.B.Nagagar. The defendant No.2 in O.S.No.125 of 2019 filed O.S.No.74 of 2019 on the file of learned I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar against defendant Nos.1 to 3 (G. Raghuram Reddy, Narayan Singh and Surender Reddy (plaintiff in O.S.No.125 of 2019) seeking permanent injunction in respect of open plot bearing No.41 admeasuring 552 square years in Sy.No.9/1/H situated at Haripuri Colony, Saroornagar Village and Revenue Mandal. Along with the suit, the plaintiff has filed I.A.No.87 of 2019 seeking ad interim temporary injunction, wherein interim

orders were granted on 01.02.2019. Accordingly, the said petition was dismissed on merits 06.06.2019 vacating the interim orders passed on 01.02.2019. Aggrieved by the same, the plaintiff preferred CMA No.52 of 2019 on the file of learned II Additional District Court, Ranga Reddy District at L.B.Nagagar. After hearing both the sides, the learned II Additional District Court, Ranga Reddy District at L.B.Nagagar passed the impugned common order on 23.03.2020, wherein Sri Mantri Ravinder Rao was appointed as Advocate Commissioner to localize the properties in question with the help of Mandal Surveyor after giving notice to both sides and by receiving work memos, if any, furnished by them and also shall specifically mention whether they are two different properties or a single property and in which survey number it is situated by drawing a sketch to not down the physical features and also to measure the plots to the scale to arrive at the exact extent. Aggrieved by the same the plaintiff in O.S.No.125 of 2019 and defendant No.3 in O.S.No.74 of 2019 filed the present Civil Revision Petitions to set aside the impugned order.

5. Heard both sides and perused the record including the grounds of revision.

6. The first and foremost contention of the learned counsel for the revision petitioner is that the boundary dispute in respect of land in Sy.No.9/1/F situated in Alkapuri Colony of Saroornagar comes under GHMC was already localized and demarcated in favour of vendor's vendor of the petitioner in W.P.No.38038 of 2018 and in A.S.No.190 of 2004 with the observations of report submitted by the Director of Survey, Settlement of Land Records. It is further contended that localization for identity of respective plots situated in Sy.No.9/1/F and Sy.No.9/1/H are already been decided by the competent Courts in different proceedings including in W.A.No.1386 of 2008 and batch based on the report filed by the Director of Survey, Settlement and Land Records vide File No.RC.No.N2/10775/08 dated 25.02.2009.

7. It is pertinent to note that the revision petitioner, who is plaintiff in O.S.No.125 of 2019 is claiming rights in respect of plot No.25/A admeasuring 361 square yards in sy.No.9/1/F situated at Ward No.1, Block No.13, Alkapuri Colony, Saroornagar Village and Mandal. On the other hand, the plaintiff in O.S.No.74 of 2019 is claiming rights in respect of open plot bearing No.41 admeasuring 552 square years in Sy.No.9/1/H situated at Haripuri Colony, Saroornagar Village

and Revenue Mandal. On comparison of the schedule of properties in both the suits, there is difference and variation in extent, survey number, name of the colony and plot number. Thus, there is serious dispute with regard to the identity of the property. It is also to be noted that the based on the report submitted by the technical committee, the Director of Survey, Settlements and land Records submitted a report on 28.02.2009 before the High Court in W.A.Nos.1386 and 1477 of 2008 and W.A.(SR) No.121840 of 2008, wherein it was clearly mentioned that as regards the land in Sy.No.9/1/F there is no sub-division record for the said sub-division and in fact for all the sub-divisions 9/1/A to 9/1/M, which find a mention in Collector, Ranga Reddy Lr. NoE4/6303/93 dated 05.06.2003, as such, it is not possible to identify the exact location of Sy.No.9/1/F with reference to any authentic survey record. Thus, the above said report is not of much use to resolve the dispute between the parties, more particularly, when both the parties are trying to claim their rights in respect of same land, which was sub-divided and for which there is no record. Moreover, the above said report is pertaining to the year 2009 and whereas the suits filed by both the parties are pertaining to the year 2019, thus, there is every possibility of change in nature of schedule of property in a decade's time.

8. The above said survey report was submitted in connection with the land to an extent of Ac.15.00 guntas in Sy.No.9/1 of Saroornagar Village and whereas the learned II Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar has passed the impugned order only to the extent of plot No.25/A admeasuring 361 square yards in sy.No.9/1/F and open plot bearing No.41 admeasuring 552 square years in Sy.No.9/1/H with an observation that there is a compound wall on all the fore sides with a single room in the subject property. The trial Court observed that both the properties are different but at the same time dismissed the application filed by the plaintiff in O.S.No.74 of 2019 and allowed the application filed by the plaintiff in O.S.No.125 of 2019. When both the properties are different, there shall be no dispute with regard to the identity of the property and the parties shall not fight for the same property. Thus, there is lot of ambiguity in identifying the schedule of property in both the suits. Before identification and localizing the petition schedule property, it is very difficult to arrive at a conclusion with regard to granting or not granting of injunction in respect of such unidentified disputed property. In such circumstances, the learned II Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar, having no other option, has rightly appointed an Advocate Commissioner

not only to localize the property but also to specifically mention whether there are two different properties or a single property and in which survey number the property is situated.

9. It is pertinent to note that the learned II Additional District and Sessions Judge, Ranga Reddy District at L.B.Nagar has passed the impugned order in favour of either of the parties and in order to arrive at a correct decision, an Advocate Commissioner was appointed by directing both the parties to maintain *status-quo* until the return of warrant. Whenever there is a dispute regarding boundaries or physical features of the property or any allegation of encroachment as narrated by one party and disputed by the other, the facts have to be physically verified, because, the recitals of the documents may not reveal the true facts and in such cases, measuring the land on the spot by a Surveyor may become necessary. In **K. Dayanand and another v. P. Sampath Kumar**[1], the High Court for the Composite State of Andhra Pradesh observed that for the related purpose of clarifying the physical features of the suit schedule property, there can be appointment of Commissioner even in a suit for perpetual injunction. In **P. Sreedevi v. IVLN Venkata Lakshmi Narsimha Prasad**[2], this Court observed that the

[1] 2015 (2) ALD 319
[2] 2020 (6) ALD 99 (TS) (DB)

Commissioner in effect is a projection of the Court appointed for a particular purpose; and where there is an allegation of encroachment by one party which is denied by the other, oral evidence cannot come to an aid of a party and an Advocate Commissioner may be appointed to ascertain this fact. In **M. Yadaiah and another v. M. Chilakamma and others**[3], this Court observed that appointment of Advocate Commissioner to note down the physical features does not amount to facilitating the party to collect evidence. In **Haryana Waqf Board v. Shanti Sarup and others**[4] the Apex Court observed that the only controversy between the parties was regarding demarcation of the suit land because the land of the respondents was adjacent to the suit land and the application for demarcation filed before the trial Court was wrongly rejected. In view of the principle laid down in the above said decisions, this Court is of the considered view that the first appellate Court was right in appointing Advocate Commissioner to identify the property in both the suits to arrive at a proper conclusion before granting or not granting injunction in respect of the disputed properties.

10. It is settled law that a Court appointed commissioner's report is only an opinion or noting and are 'non-adjudicatory in

[3] CRP No.294 of 2018 decided on 02.12.2021
[4] (2008) 8 Supreme Court Cases 671

nature'. It is also settled a law that appointment of advocate commissioner is a discretionary relief of the Court. Furthermore, the evidentiary value of any report of the Commissioner is a matter to be tested in the suit and such report is subject to objections including cross-examination.

11. In **M/s. Puri Investments v. M/s. Young Friends And Company & others**[5] the Apex Court observed as under:

> *"13. There was no perversity in the order of the Appellate Tribunal on the basis of which the High Court could have interfered. In our view, the High Court tested the legality of the order of the Tribunal through the lens of an appellate body and not as a supervisory Court in adjudicating the application under Article 227 of the Constitution of India. This is impermissible. The finding of the High Court that the appellate forum's decision was perverse and the manner in which such finding was arrived at was itself perverse."*

12. In view of the above facts and circumstances and considering the principle laid down in the above said decision, this Court is of the considered opinion that the first appellate Court has exercised its discretionary power in passing the impugned order and moreover, the revision petitioner failed to establish that the impugned order passed by the first appellate Court suffers from irregularity or infirmity. In such circumstances, this Court cannot interfere with the findings of

[5] Civil Appeal No. 1609 OF 2022 (arising out of SLP (C) No. 6516/2019) decided on 23.02.2022

the first appellate Court by exercising the power under Article 227 of the Constitution of India. Therefore, the Civil Revision Petitions are liable to be dismissed.

13. In the result, the Civil Revision Petitions are dismissed. There shall be no order as to costs.

Pending Miscellaneous applications, if any, shall stand closed.

**JUSTICE M.G.PRIYADARSINI**

Date: 22.01.2024
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