

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.587 of 2014

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.20.01.2014 in I.A.No.920 of 2013 in O.S.No.110 of 2013 on the file of I Additional District Judge, Anantapur.

2. The petitioner herein is the plaintiff in the above suit.

3. He filed the suit against the respondent for declaration of his title and for recovery of possession of plaint schedule property.

4. The respondent filed a written statement disputing the said claim and contended that the respondent had purchased it from some third-party and that the property which is purchased by him is different from the plaint schedule property.

5. In the view of the said pleading, I.A.No.920 of 2013 was filed by petitioner seeking appointment of an Advocate-Commissioner to note down the physical features, the exact boundaries of the plaint schedule property with the assistance of a Mandal Surveyor.

6. This application was opposed by respondent

contending that this would amount to collection of evidence and reliance was placed on the judgment of this Court in **G . Parvatha Reddy v. Boya Nagaraju alias Nagarjuna Rao**^[1].

7. The Court below dismissed the said application stating that filing of this application indicates that petitioner is not aware of the measurements of the property and its boundaries; and by appointing an Advocate-Commissioner she wants to gather the said information, which is not permissible.

8. Challenging the same, the present Revision is filed.

9. Heard Sri A. Chandra Sekhar, counsel for petitioner; and Sri M. Prasada Rao, counsel for respondent.

10. The counsel for petitioner contended that the order of the Court below is unsustainable and since there is an issue of localization of the plaint schedule property, it would assist the Court in deciding the suit if an Advocate-Commissioner is appointed to note the physical features and localize the property as sought by petitioner.

11. The counsel for respondent reiterated the stand taken by respondent in the Court below.

12. In **G. Parvatha Reddy** (1 supra), this Court held that in a suit for injunction if there is necessity for demarcation of the disputed land an Advocate-Commissioner can be appointed by the Civil Court under Order 26 Rule 9 C.P.C.

13. Admittedly, there is a dispute as to the place where the land claimed by petitioner and the land purchased by respondent is located and whether constructions being made by respondent form part of the plaint schedule property or not. Therefore, it is necessary to localize the plaint schedule property. This dispute cannot be decided by oral evidence, since the evidence is of such a nature it is only available at the site. Therefore, I am of the opinion that the judgment cited by the Court below has no application to a situation like the present one and that the Court below erred in relying upon it and dismissing the said I.A.No.920 of 2013.

14. For the above reasons, the Revision is allowed and the order dt.20.01.2014 in I.A.No.920 of 2013 in O.S.No.110 of 2013 on the file of I Additional District Judge, Anantapur is set aside, and the said I.A. is allowed. No order as to costs.

15. Miscellaneous applications, pending if any in this Revision, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-07-2015

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[\[1\]](#) 2006 (1) ALT 146