

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH

C.R.P.No.332 of 2015

Between:

Chimala Srinivasa Rao

.....Petitioner

and

Panakala Satya Balajli

.....Respondent

Date of Judgment pronounced : 04-08-2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked :
Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.332 of 2015

ORDER:

Heard Sri Y.Ramathirtha, learned counsel for the
petitioner and Sri Chintapalli Srinivas, learned counsel for

respondent.

2. This Revision Petition is filed challenging the Order dt.29-10-2014 in I.A.No.213 of 2014 in O.S.No.79 of 2013 of the I Additional Junior Civil Judge, Bhimavaram.

3. Petitioner herein is the defendant in the above suit. The respondent/plaintiff filed the suit against the petitioner for a perpetual injunction restraining the petitioner from interfering with his alleged peaceful possession and enjoyment of the plaint schedule property.

4. Pending suit, the respondent/plaintiff filed I.A.No.213 of 2014 under Order 26 Rule 9 CPC requesting the Court below to appoint advocate commissioner to note down the physical features of the plaint schedule property (including digital photographs).

5. In the affidavit filed in support of the said application, he has stated that he is in possession and enjoyment of the plaint schedule property and that the petitioner is trying to interfere with his possession and enjoyment thereof. He did not state why an advocate commissioner needs to be appointed to note down the physical features of the property.

6. Counter affidavit was filed by the petitioner opposing this application. It was contended by the petitioner that the respondent has to bring his case

through the documents on which he relies and he is not entitled to gather evidence by getting an advocate commissioner appointed. It was also pointed out that the application filed by the respondent does not state what physical features, he wants advocate commissioner to note and that the nature of the suit being such, there is no necessity to note down any physical features or taking of digital photographs.

7. By order dt.29-10-2014, the Court below, while observing that the respondent did not mention any specific reasons for appointment of an advocate commissioner to note down physical features of the suit schedule property, allowed the said I.A. It observed that local investigation report would enable the Court to make correct assessment of evidence on record.

8. Challenging the same, this Revision Petition is filed.

9. Learned counsel for the petitioner contended that the suit filed by the respondent against the petitioner only complained of a threat by the petitioner to dispossess the respondent; as no reasons are assigned why advocate commissioner should be appointed to note down physical features, the Court below should not have allowed I.A.No.213 of 2014 and appointed an advocate commissioner.

10. Learned counsel for the respondent on the

other hand refuted the said contention and supported the order passed by the Court below.

11. The affidavit filed in support of I.A.No.213 of 2014 sets out the case of the respondent with regard to his title and possession of the plaint schedule property but does not give any reason why he wanted an advocate commissioner to be appointed to note down physical features of the property or for taking digital photographs. It is not a suit wherein there is a dispute between the neighbours or there is a dispute about the location of the plaint schedule property or one where there is an allegation of a destruction of a pathway/road/water course/structures.

12. Therefore, in the absence of any of these factors in the pleadings of either parties, appointment of an advocate commissioner cannot be resorted to since such appointment would then assist only in collection of evidence to prove the possession of one of the parties to the suit. This is impermissible in law.

13. In this view of the matter, the order dt.29-10-2014 in I.A.No.213 of 2014 in O.S.No.79 of 2013 of the I Additional Junior Civil Judge, Bhimavaram is set aside and the said I.A. is dismissed. Accordingly, the Civil Revision Petition is allowed. No costs.

14. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-08-2015

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