

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION NO.2157 of 2015

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ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order dated 22.04.2015 passed in I.A.No.433 of 2014 in O.S.No.95 of 2013 by the Junior Civil Judge, Alair, whereunder the I.A filed under Order XXVI Rule 9 r/w Section 151 C.P.C., seeking to appoint Advocate-Commissioner to note down the physical features of the suit schedule property, was dismissed.

The petitioners are defendants in the suit. The respondent/plaintiff filed the suit for perpetual injunction against the petitioners/defendants. The petitioners filed I.A seeking to appoint Advocate Commissioner to note down the physical features of the suit schedule property, stating that the respondent/plaintiff purchased the suit scheduled property admeasuring an extent of Ac.2.00 gts., from the 1st defendant in Sy.No.85 and Ac.2.20 gts., from one Laxminarsimha Reddy and by taking advantage of the same, the respondent/plaintiff is trying to occupy the land of the petitioners/defendants to an extent of Ac.00.12 ½ gts., in Sy.No.84, by showing wrong boundaries. The apprehension of the petitioners is that in as much as the plaintiff showed the Southern boundary as the land in Sy.No.85 of defendants and Mendu Moghala Reddy, there is every possibility for the respondent/plaintiff to encroach into the land of the petitioners.

The learned Junior Civil Judge dismissed the I.A observing that the plaintiff/respondent had given specific boundaries to his property, therefore, the initial burden lies on him to prove his possession within the boundaries mentioned in the suit schedule property by adducing his own evidence. Moreover, it is not the case of the petitioners that there is a boundary dispute between the them and respondent/plaintiff. Admittedly, as the suit is for perpetual injunction, the burden lies on the party to the suit to establish his possession over the suit schedule property and that the burden of proving the possession cannot be entrusted to an Advocate Commissioner and the same will amount to gathering of evidence.

Aggrieved by the same, the present revision petition is filed by the petitioners/defendants.

When the matter was listed for admission on 19.06.2015 this Court issued notice before admission and petitioners were also permitted to take out personal notice. Accordingly the petitioners took personal notice on the respondent and filed proof of service memo on 30.09.2015. Thereafter, on 9.10.2015 this Court granted interim stay of all further proceedings in O.S.No.95 of 2013.

I have considered the arguments of the learned counsel for the petitioners and perused the material available on record.

Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in **Haryana Waqf Board v. Shanti Sarup and others**; and this Court in **Varala Ramachandra Reddy v. Mekala Yadi Reddy and others** and **Jayalakshmi Constructions, Hyderabad and another v Nawab Behboob Ali Khan and others**.

Though the respondent/plaintiff served with notice there is no appearance on his behalf.

The judgment cited by the learned counsel for the petitioners in **Haryana Waqf Board v. Shanti Sarup and others** (1 supra) is a case where the suit was filed for declaration in which the injunction application filed under Order 26 Rule 9 C.P.C., for demarcation of the disputed land, which was rejected by the trial Court and in the Second Appeal the High Court dismissed the same. In Civil Appeal the Supreme Court was of the view that the High Court ought to have considered the aspect that even before the appellate Court the appellant-Board had filed an application for appointment of a Local Commissioner for demarcation of the suit land and then decided the second appeal on merits, and accordingly set aside the judgment and decree passed in the Second Appeal.

The facts of the above judgment are not similar to the facts of the present case since it is not a case for noting down the physical features as in the present case. The nature of the relief claimed in the main suit and the relief granted by way of interlocutory application are certainly relevant in that particular case to resolve the dispute.

In **Varala Ramachandra Reddy v. Mekala Yadi Reddy and others** (2 supra) Advocate Commissioner was sought to be appointed for demarcation and fixing of boundaries, which was dismissed by the trial Court and in revision this Court allowed the revision setting aside the order in I.A.

In **Jayalakshmi Constructions, Hyderabad and another v Nawab Behboob Ali Khan and others** (3 supra) is a case where Advocate Commissioner was appointed to note down the physical features of the scheduled mentioned properties with a further direction to draw rough sketch and to take photographs if necessary. The same was challenged before this Court by filing revision petitions. On appreciation of facts on record this Court came to the conclusion that the apprehension of the revision petitioners that it is for the purpose of collection of evidence, appears to be not real. Even otherwise the Court refrained the parties from using such reports for the purpose of deciding the main issue in controversy except to elucidate the fact in dispute after obtaining full information in respect thereof and dismissed the revision petitions.

The facts in the present case, as discernable from the pleadings, as well as the arguments of the learned counsel for the petitioners are that the respondent/plaintiff is claiming right over the property in Sy.No.85 and he sought perpetual injunction against the petitioners/defendants. But the respondent/plaintiff is not claiming any right over the land in Sy.No.84. It is for the plaintiff to establish his specific case by adducing evidence establishing that he has a right over the property in Sy.No.85 and the petitioners/defendants are interfering/encroaching into his land. The apprehension of the petitioners/defendants that in the guise of obtaining perpetual injunction the plaintiff/respondent might encroach into the land in Sy.No.84 has no cause of action which gives raise to initiate appropriate legal proceedings. Even otherwise mere noting down the physical features it is well-nigh impossible to someone to say that a particular land is in a particular survey number. In other words appointment of Advocate Commissioner for noting down the physical features does not in any way aid or help the petitioners.

Viewed from any angle, the order of the learned Junior Civil Judge in refusing to appoint Advocate Commissioner cannot be found fault with. I do not see any infirmity in the order passed by the learned Junior Civil Judge. The reasons stated by the learned Judge are germane to the facts of the present case.

Accordingly, the Civil Revision Petition is dismissed. However, it is made clear that the observations made in the present revision petition shall not be construed as any opinion in relation to the rights of the parties with respect to their respective claims.

As a sequel, pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

13th September, 2015

Js.

L.R. copy to be marked.