

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.2189 of 2015

ORDER:

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This civil revision petition arises out of the order dated 10.02.2015 passed by the learned I Additional Junior Civil Judge, Tanuku, in I.A.No.5 of 2015 in O.S.No.136 of 2008. By the said order, the trial Court allowed the application filed by the defendants in the suit seeking appointment of an advocate commissioner under Order 26 Rule 9 CPC and the advocate commissioner so appointed was directed to file his report by 03.03.2015. Aggrieved thereby, the plaintiffs in the suit are before this Court.

By order dated 19.06.2015, this Court granted interim stay of further proceedings in the suit being of the opinion that the order passed by the trial Court did not disclose the reasons as to why appointment of an advocate commissioner was found necessary and merely because both parties sought injunction decrees against each other would not entitle the Court to resort to such a course of action routinely.

Heard Sri S. Syam Sunder Rao, learned counsel for the petitioners/plaintiffs, and Sri Srinivas Mallampalli, learned counsel for the respondents/defendants.

O.S.No.136 of 2008 was filed by the petitioners/plaintiffs for a permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit schedule property. The respondents/defendants filed a counter-claim in the said suit under Order 8 Rule 6-A CPC seeking a mandatory injunction directing the plaintiffs to remove the bathroom-cum-latrine and thatched hut in the suit property and deliver vacant possession to them and also a consequential permanent injunction restraining the petitioners/plaintiffs from interfering with their possession. It appears that both parties laid claim to the disputed property under registered sale deeds. The petitioners/plaintiffs claim under a sale deed of the

year 1995 while the respondents/ defendants claim under a sale deed of the year 2005. In essence, there appears to be a boundary dispute between the parties.

Order 26 Rule 9 CPC empowers the Court, whenever it deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, to issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. Therefore, exercise of power by the trial Court under this provision requires it to at least record reasons as to why a local investigation is deemed requisite or proper. Unfortunately, the order under revision does not reflect acceptable reasons as to why the trial Court deemed it necessary and proper to order appointment of an advocate commissioner. However, having heard the learned counsel for the parties and perused the record, this Court is of the opinion that though the order is lacking in reasons, exercise of power by the trial Court was just and proper. As the respondents/defendants in O.S.No.136 of 2008 stand in the status of plaintiffs insofar as their counter-claim is concerned, it is open to them to independently seek appointment of an advocate commissioner so as to determine their claim for relief. As the case involved a boundary dispute and local investigation would be of great assistance to the trial Court to finally resolve the issue, this Court finds that the appointment of an advocate commissioner was lawful and valid in the facts and circumstances of the case. The order under revision therefore does not warrant interference.

The civil revision petition is devoid of merit and is accordingly dismissed.

Interim order dated 19.06.2015 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

7th September, 2015
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