

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2929 of 2015

ORDER:

Assailing the order dated 30.12.2014 passed in I.A. No.632 of 2014 in O.S.No.62 of 2014 on the file of the Senior Civil Judge at Sircilla, wherein an application filed under Order XXVI Rule 9 of C.P.C., seeking appointment of Advocate-Commissioner to note down the physical features of the suit land was dismissed, the present Revision is filed under Article 227 of the Constitution of India.

The facts which led to filing of the case are as under :

The plaintiff and defendants 1 and 2 are natural brothers and they are in joint possession and enjoyment of the agricultural land admeasuring Ac.5.07 guntas in Survey No.409 situated at Boppapur village of Yellareddypet Mandal. It is alleged in the plaint that the plaintiff's family laid sheep sheds in one part and raising seasonal crops in other part of the land. It is stated that after the death of Balaiah, who is the grandfather of the plaintiff and defendants 1 and 2, disputes arose between the plaintiff and defendants 1 and 2, due to which, the 2nd defendant with a view to deprive the rights of the plaintiff over the suit schedule land, got mutated an extent of land

measuring Ac.2.12 gts. out of suit schedule land in the name of the 1st defendant in the revenue records. It is further alleged that taking advantage of wrong entries made, the 2nd defendant is trying to alienate the same to deprive the rights of the plaintiff over the suit schedule land. Finally on 10.04.2014, the plaintiff demanded the 2nd defendant to make partition of the suit schedule land and to allot his 1/3rd divided share therein, but 2nd defendant at the instigation of 1st defendant refused to do so. It is stated that the defendants 7 to 13 are strangers to the suit schedule land but by taking advantage of the disputes among the plaintiff and defendants 1 and 2, are interfering with the joint possession and enjoyment of the plaintiff schedule land. Basing on these allegations, a suit for partition against D-1 and D-2 and injunction against the defendants 7 to 13 came to be filed.

A written statement came to be filed by the defendants 7, 8, 10 to 13 denying the allegations made in the plaint. It is stated that the suit Survey No.409 admeasuring Ac.5.07 gts was previously held by the grandfather of the plaintiff by name Lamba Komuraiah, Addagulla Nagabhushanam and Addagulla Shekaram. The grandfather of the plaintiff held Ac.2.36 gts, while Addagulla Nagabhushanam and Shekaram held Ac.1.17 ½ and Ac.0.34 gts respectively. It is further stated that

after the death of grandfather of the plaintiff, his only daughter Devaiah sold Ac.4.13 gts. to the Primary Sheep growers Co-operate Society known as Yadava Sangham of Boppapur in the year 1997 and its members are put into possession of the said land. Prior to the said sale, the owner of Ac.0.34 gts., Addagulla Nagabhushanam and Shekaram sold the very same extent to Yadava Sangham and the defendants are some of the members of the said Sangham. It is stated that the certified copy of pahanies for the years 1997-98, 1998-99, 2000-01, 2003-04 and 2004-05 disclose possession of Yadava Sangham over the suit land. After purchase, the members of Yadava Sangham erected sheds and made enclosures for storing manure and for resting their sheep. It is their case that the members of the Association are in exclusive possession and enjoyment of Ac.5.07 gts., of land. While things stood thus, the petitioners herein filed I.A. No.632 of 2014 under Order XXVI Rule 9 of C.P.C. seeking appointment of an Advocate-Commissioner for noting down the physical features of the said suit land. A counter came to be filed opposing the same. After hearing both sides the Senior Civil Judge at Sircilla dismissed the said application. Challenging the same, the present C.R.P. is filed.

A perusal of the averments in the I.A. filed before the trial Court would show that the plaintiff filed the suit against the defendants seeking relief of partition against 1

to 3 and for perpetual injunction against the defendants 7, 8, 10 to 13 restraining them from interfering with the suit land. It is the case of the defendants that though there exists some installations other than sheep sheds on the suit land the plaintiff have deliberately shown such installations. It is said that to elucidate the matter in controversy, it is most essential to note down the physical features of the suit land by appointing an Advocate Commissioner. It is further stated that if the physical features of the suit land are noted down, no prejudice would be caused to the plaintiff as the possession would not be established by such act. A counter came to be filed opposing the same. It is stated in the counter that the plaintiff's family laid sheep sheds in one part and raised seasonal crops in other part of the suit schedule land and since the plaintiffs have already mentioned in the plaint about the existence of the structures, which were utilized by the plaintiff's family, appointment of an Advocate-Commissioner may not be necessary. A perusal of the record would show that initially the Court below granted an interim injunction in favour of the plaintiff and the same is in force till date.

From the above it is clear that there exists a dispute between the parties with regard to existence of some erections other than the sheep sheds. It is the case of the plaintiff that sheep sheds were erected in one part

and the remaining portion of the land was being used to raise seasonal crops. Whereas, the case of the petitioners/defendants herein is that after the purchase of the land by the members of the Yadava Sangham, sheds were erected and the enclosures (round shaped iron fencing) made in a part of the suit land and kept open the remaining area for storing manure and for resting the sheep. Hence, there lies a dispute as to the existence of structures other than the sheep sheds.

The only point that arises for consideration is “Whether the situation warrants appointment of an Advocate-Commissioner?”

Under Order XXVI Rule 9 C.P.C., reads as under :

“Commissions to make local investigation: In any suit in which the Court deems as local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any *mesne profits* or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the same shall be bound by such rules.”

From the above, it is clear that a Commissioner may be appointed where the Court deems local investigation to be requisite or proper for the purpose of

elucidating any matter in dispute.

In **Pilli Yadaiah v. Pilli Komraiah and others**^[1], this Court while dealing with a dispute as to the existence of the cattle pen in the suit land felt that to avoid voluminous oral evidence, it would be appropriate to appoint an Advocate Commissioner to note down the physical features of the suit land.

Similarly, in **Shaik Mahammad Rafi v. Correspondent of Saint Francis Integrated English Medium School, Dommarapalem, Venkatagiri, SPSR Nellore District**^[2], this Court while dealing with an issue as to appointment of Advocate Commissioner in a suit filed for permanent injunction held as under :

“Wherein a given case, the Court feels that the report of a Commissioner may help the Court in deciding the question in controversy before it relating to identification, location, measurement etc., of the property in dispute, it may appoint an Advocate-Commissioner. The measurement of disputed property sometimes helps the Court to understand whether there is any encroachment of the disputed land.”

In the instant case, a dispute exists as to the erection of installations apart from sheep sheds raised by the plaintiff. Further, there is no bar for appointment of Commissioner in a suit for injunction in view the law laid down in the judgments referred to above, nor the provisions of Section 75 and Order XXVI Rule 9 of C.P.C.,

do impose such a prohibition. The petitioners/defendants 7,8,10 to 13 filed the present application for Appointment of Advocate Commissioner to note down the physical features of the schedule property only and not for the purpose of finding out who is in possession of the property. Taking into consideration the totality of circumstances and to avoid voluminous oral evidence, this Court is of the considered view that the appointment of a Commissioner would undoubtedly and certainly assist the Court below to arrive at a just and correct conclusion.

Accordingly, the Civil Revision Petition is allowed by setting aside the order dated 30.12.2014 in I.A. No.632 of 2014 in O.S.No.62 of 2014 on the file of the Senior Civil Judge at Sircilla. No order as to costs. Miscellaneous Petitions pending if any in this C.R.P. shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 27.08.2015

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^[1] 2013(5) ALD 22

^[2] 2014(1) ALD 537