

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

CIVIL REVISION PETITION No.459 of 2015

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the Order dt.26-12-2014 in I.A.No.252 of 2014 in O.S.No.36 of 2013 of the Junior Civil Judge, Lakkireddypalli.

2. The petitioner herein is plaintiff in the suit. He filed the suit for a perpetual injunction restraining the respondents herein from interfering with his peaceful possession and enjoyment of the plaint schedule property, which according to him is located in Sy.No.2054/3 and 2054/4 of total extent Ac.5-15 cents within specified boundaries.

3. While so, the respondents/defendants filed I.A.No.252 of 2014 therein seeking appointment of an Advocate-Commissioner along with District Surveyor to fix the boundaries of the suit schedule property and note down physical features of the same.

4. In the said application, they specifically alleged that the property described in the schedule to the plaint in the suit filed by petitioner is actually located in Sy.Nos.2055/3 and 2055/4 belonging to defendant Nos.2 and 3; that Sy.No.2054 is situated to the West of

Sy.No.2055; and therefore, it is essential to identify the location of the suit schedule property and fix its boundaries. This application was filed on 10-10-2014.

5. Notice in this application was served on petitioner. Petitioner, it appears, did not file a counter to the I.A.No.252 of 2014 having sought time more than once for filing counter.

6. In view of non-cooperation by petitioner, the Court below, on 26-12-2014, allowed I.A.No.252 of 2014 and appointed an Advocate-Commissioner to visit the suit locality, note down physical features of the same, identify the property with boundaries with the assistance of Surveyor or District Surveyor, and take photographs of the suit schedule property.

7. Questioning the same, this Revision is filed by petitioner.

8. The learned counsel for petitioner contended that petitioner should have been given an opportunity by the Court below to contest I.A.No.252 of 2014 and therefore, the order passed be set aside.

9. I am unable to agree with the said submission. The application was filed in October, 2014 and notice thereon was given to the learned counsel for the petitioner in the Court below. Having sought time more than once,

the petitioner did not file counter. Therefore, the petitioner cannot be allowed to take advantage of his own wrong and contend that he was deprived of an opportunity to contest the I.A.

10. The learned counsel for petitioner also contends that this being a suit for injunction, the defendants cannot be allowed to seek for appointment of an Advocate-Commissioner for the purpose mentioned in the I.A. as it amounts to permitting collection of evidence. This contention also I am unable to agree.

11. In **Badana Mutyalu and another Vs. Palli Appala Raju** ^[1] this Court held that When the parties are neighbours and there is an allegation that the property belonging to the respondent is being interfered with by petitioner, it is incumbent on the Court to decide where the disputed portion is located, and whether or not it forms part of the property claimed by the respondent; that the object of local investigation under O. XXVI R.9 of the Code cannot be belittled and its object is to collect evidence at the instance of the party who relies on the same, and which evidence cannot be taken in court, but could be taken only from its peculiar nature, on the site.

12. In the present case, the contention of the defendants is that having filed suit in respect of the land in Sy.No.2054, the petitioner is in fact trying to grab the

property of defendants in Sy.No.2055 and therefore it is essential to locate where the plaint schedule property actually exists. In the light of this pleading, and in view of the above judgment, appointment of an Advocate-Commissioner to fix the boundaries of the suit schedule property and to note down the physical features therein would not amount to enabling the defendants to collect evidence. The nature of dispute in the suit being one as to the exact location of the suit schedule property, evidence as to its location can only be available on the site. It is of such peculiar nature that without the appointment of Advocate-Commissioner it cannot be established where the plaint schedule property is exactly located. No amount of oral evidence would help the Court to decide the issue.

13. In this view of the matter, I do not find any error or jurisdiction in the order passed by the Court below warranting interference by this Court in exercise of its power under Article 227 of the Constitution of India.

14. Therefore, this Revision fails and accordingly it is dismissed at the stage of admission. No costs.

15. As a sequel, all miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-02-2015

vsv

[\[1\]](#) 2013(5) ALD 376