

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

-
CIVIL REVISION PETITION No.617 of 2015

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the I Additional Junior Civil Judge, Chittoor in I.A. No.357 of 2014 in O.S. No.143 of 2014. The respondent herein is the plaintiff in O.S. No.143 of 2014, and the petitioner in I.A.No.357 of 2014. The revision petitioner is the defendant in O.S.No.143 of 2014, and the respondent in I.A.No.357 of 2014. Parties shall, hereinafter, be referred to as they are arrayed in I.A.No.357 of 2014.

The petitioner filed an application, under Order 26 Rule 9 CPC, for appointment of an Advocate Commissioner to note down the existing physical features of the property. In the order under revision, the Court below noted the contents in the counter-affidavit filed by the respondent that item No.2 of the suit schedule property in survey No.385/5, and survey No.385/4, were adjacent survey numbers; survey No.385/4 belonged to the respondent and some extent of land, in survey No.385/5, belonged to the petitioner; the land of the petitioner was higher in level than the land of the respondent; an extent of Ac.0.30 cts of land, in survey No.385/5, belonged to him wherein mango saplings were planted in the year 2008; and he had perfected his right and title by way of adverse possession to an extent of Ac.0.30 cts in survey No.385/5.

After taking note of ten judgments cited on behalf of the petitioner, the Court below observed that the petitioner was contending that item Nos.1 and 2 of the petition schedule properties were in his possession and enjoyment; he was also issued pattadar pass books and title deeds for the same; on the other hand the respondent was contending that item No.2 of the suit schedule properties, of an extent of Ac.0.30 cts, was in his possession and enjoyment, and he had obtained pattadar pass books and title deeds; the High Court had, in various decisions, reiterated that, in cases where there was a dispute with regards the identity of the suit property, an Advocate Commissioner could be appointed; and it was,

therefore, necessary to appoint an Advocate Commissioner to note down the existing physical features and to fix the boundary stones for the suit schedule properties with the assistance of a mandal surveyor.

Sri T.S. Anand, Learned Counsel for the revision petitioner (respondent in I.A.No.357 of 2014), would contend before this Court that, as a written statement has not yet been filed, and issues have not been framed in the suit, the Court below had erred in appointing an Advocate Commissioner. It is not in dispute that an *ex parte* order of temporary injunction was passed; and, thereafter, the respondent had filed an application to have the order of injunction vacated. The Court below exercised its discretion to appoint an Advocate Commissioner to note down the physical features of the suit schedule property. While the submission urged before this Court, by Sri T.S.Anand, Learned Counsel for the petitioner, is that an Advocate Commissioner cannot be appointed before a written statement is filed, neither has any statutory provision been referred to, nor has any judicial pronouncement been relied upon, in support of such a contention. The order of the Court below, appointing an Advocate Commissioner, cannot be said to have caused substantial prejudice to the revision petitioner, as the Advocate Commissioner has merely been directed to note down the physical features of the suit schedule property and to fix the boundary stones. I see no reason, therefore, to exercise jurisdiction under Article 227 of the Constitution of India to interfere with the discretion exercised by the Court below in appointing an Advocate Commissioner.

The Civil Revision Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date: 27.02.2015

MRKR