

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

CIVIL REVISION PETITION No.4921 of 2014

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ORDER:

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This Civil Revision Petition is filed challenging the order dt.25-11-2014 in I.A.No.466 of 2014 in O.S.No.45 of 2012 of the I Additional Junior Civil Judge at Eluru.

2. The petitioner herein is defendant in the above suit.

3. The said suit was filed by respondent against petitioner for a perpetual injunction restraining the petitioner from interfering with her alleged peaceful possession and enjoyment of the suit schedule property.

4. Written statement was filed by petitioner opposing the suit claim.

5. The dispute between the parties is that while respondent claims that she is the owner and possessor of the land of extent Ac.2.80 cents in R.S.No.357/1F of Kuchumpudi village, the petitioner claims that he is the owner of land of extent Ac.3.51 cents in R.S.No.851/1 of the same village. It is not disputed that both parties are claiming the same property on the basis of the above

pleadings.

6. The respondent filed I.A.No.466 of 2014 under Order XXVI Rule 9 C.P.C. contending that it is necessary to localize the plaint schedule property with the help of a Mandal Surveyor, Pedavegi village since the petitioner is stating that plaint schedule property is not in existence.

7. This application was opposed by petitioner stating that in a suit for permanent injunction, it is not necessary to note down the physical features through an Advocate-Commissioner. It was also pointed out that according to the respondent, her land is located in Ramasingavaram village. Petitioner therefore contended that suit schedule property is not at all in existence and the respondent had no possession thereof.

8. By order dt.25-11-2014, the Court below allowed I.A.No.466 of 2014. It held that there is a serious dispute about physical existence of the property itself and that the property needs to be localized to resolve the dispute between the parties. It also held that disputes of this nature can only be resolved by appointing an Advocate-Commissioner to demarcate the plaint schedule property. It therefore allowed the I.A. and appointed an Advocate-Commissioner to note down whether the plaint schedule property is situated in R.S.No.387/1F of Kuchimpudi

village of Pedavegi Mandal or in R.S.No.851/1 of Kuchimpudi village, h/o.Ramasingavaram of Pedavegi Mandal and to note down the physical features of the property with the assistance of the Mandal Surveyor.

9. Challenging the same, this Revision is filed.

10. Although the learned counsel for petitioner Sri K.Sita Ram contended that in the facts and circumstances of the case, the Court below ought not to have appointed an Advocate-Commissioner, I am unable to agree with the said submission since admittedly both petitioner and respondent are claiming the same property. While petitioner is alleging that the said property is his land in R.S.No.851/1 of Kuchimpudi village, h/o.Ramasingavaram, the respondent is contending that it is in R.S.No.387/1F of Kuchimpudi village. Disputes of this nature require localization through an Advocate-Commissioner taking the help of a Mandal Surveyor as held in **Bandaru Mutyalu and another Vs. Palli Appalaraju**^[1], **Velaga Narayana and Others Vs. Bommakanti Srinivas and Others**^[2] and **Nambada Varaha Narasimhulu Vs. Karanam Dalamma and others**^[3]. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting

interference by this Court under Article 227 of the Constitution of India.

11. Therefore, the Civil Revision Petition is dismissed.
No costs.

12. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 02-09-2015

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[\[1\]](#) 2013(6) ALD 26

[\[2\]](#) 2014(4) ALT 152

[\[3\]](#) 2014(6) ALT 94