

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4745 of 2014

ORDER:

The present Civil Revision Petition is filed by the defendants under Article 227 of the Constitution of India, challenging the order dated 28.10.2014 passed in I.A.No.196 of 2014 in O.S.No.32 of 2011, on the file of the learned Junior Civil Judge, Sidhout.

For the sake of convenience, the parties will hereinafter are referred to as arrayed before the lower Court.

The facts in issue are as under:

The plaintiff/respondent herein filed O.S.No.32 of 2011 seeking permanent injunction against defendant Nos. 1 and 2 restraining them and their men, agents, servants, relatives etc., from interfering with plaintiff's peaceful possession and enjoyment of the plaint schedule property. In the said suit, the defendants herein also filed written statement. Pending the said suit, the petitioners herein filed I.A.No.196 of 2014 under Order XXVI Rule 9 of the Code of Civil Procedure (C.P.C.) for appointment of an Advocate Commissioner to note down the physical features of the petition schedule property with possession and enjoyment of the petition schedule property. It is averred in the petition that the plaint schedule property belongs to the petitioners and they are in continuous possession and enjoyment of the same since long time. It is further stated that the said property was purchased in the year 1997 and are

cultivating the said land with the help of a bore well having motor and electricity connection bearing S.No.20. Since the property is in continuous possession of the petitioners herein, they sought for appointment of an Advocate Commissioner for the relief mentioned above. The respondent herein filed counter affidavit opposing the same. The case of the respondent herein is that he is in possession of the property and neither he nor his father sold the plaint schedule property at any point of time to anybody. He further states that the plaintiff/respondent herein has raised drumstick plants and turmeric crop in the schedule property and neem trees on the bunds of the land. It is stated that after filing of the suit, the second petitioner herein tried to cut the trees, which led to lodging of a report at Vontimitta Police Station. As the police failed to register the crime, a complaint came to be filed before the Mandal Revenue Officer, Vontimitta, who forwarded the same to the police station under Section 156 (3) of Cr.P.C. But the police, who were under the influence of the petitioners herein, failed to take any action. The averment in the counter also disclose that the electricity connection bearing S.No.20, which was in the name of the petitioners herein, was denied by the respondent. But on the other hand, it is mentioned in the counter that an electricity connection is in the name of the respondent/plaintiff. In view of the above, he sought for dismissal of the application.

By an order dated 28.10.2014, the learned Junior Civil Judge, Sidhout, rejected the application seeking appointment of an Advocate Commissioner. Aggrieved by the same, the present civil revision petition is filed.

A perusal of the material on record would show that the plaintiff filed a suit for a relief of permanent injunction, restraining defendant Nos.1 and 2, their men, agents and servants from interfering with the peaceful possession and enjoyment of the petition schedule property. The petitioners/defendants filed their written statement. When the matter was coming up for cross-examination of P.W.1, the present petition came to be filed. A perusal of the said petition show that the Advocate Commissioner is sought to be appointed to know the physical features and also to know the person in whose possession the petition schedule property is. As seen from the record, there is no dispute amongst the parties with regard to the boundaries. Therefore, the only dispute is as to who is in possession of the plaint schedule property. Admittedly, the property in question is an agricultural land. It is well established principle of law that an Advocate Commissioner cannot be appointed to gather the evidence. The High Court in **PAREPALLY SATYANARAYANA Vs. VUTUKURI**

MEENENDER GOUD AND ANOTHER^[1] held as under:

“...10. There is no dispute about the proposition of law in the above decisions that the purpose of appointment of a Commissioner is not to gather information regarding the possession of the property in an injunction suit.

11. Order 26 Rule 9 of C.P.C. reads as follows:

Order 26 Rule 9: Commissions for local investigations: In any suit in which the Court deems a 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 Court shall be bound by such rules.

From the above provision, it is clear that the Court has power to appoint a Commissioner for local inspection of the suit premises, therefore, it cannot be said that the Court has no power to appoint a commissioner for local inspection.

12. A Commissioner cannot be appointed to find out as to who is in possession of the property. But he can be appointed to make local investigation to ascertain the facts or other material which are found in the property and to make a report in regard to that matter to the Court. The order of the lower Court was directing the Commissioner to make local inspection of the suit premises, to break open the lock provided that the petitioner is in occupation of the premises and to note down the physical features. The Commissioner filed a report mentioning that the property was identified in the presence of both the parties and he broke opened the lock and entered the suit premises and found some articles and furniture in the premises and noted that physical features. The Commissioner did not mention that the suit premises was handed over to the plaintiff. Unless he breaks open the lock, he will not be in a position to know the physical features of the malgi from outside.”

A reading of the judgment referred to above would show that a Commissioner cannot be appointed to find out as to who is in possession of the property. Virtually, it amounts to gathering evidence which otherwise has to be established during trial by leading evidence.

In view of the legal position and having regard to the circumstances indicated above, the request of the petitioner for appointment of an Advocate Commissioner cannot be accepted.

Hence, I see no reason to interfere with the findings of the trial Court and accordingly the civil revision petition is dismissed.

There shall be no order as to costs.

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

C. PRAVEEN KUMAR, J

05.02.2015

vhb

[\[1\]](#) 2008(1) ALD 461