

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.R.P No.980 of 2015

Date:17.04.2015

Between:

Gunti Narsimha and others.

... Appellants.

AND

Kothuru Srinivas

...Respondent.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

C.R.P No.980 of 2015

JUDGMENT:

This revision is preferred against order dated 27-02-2015 in I.A.No.38/2014 in I.A.No.574/2013 in O.S.No.112/2013 on the file of Junior Civil Judge, Gajwel whereunder petition filed by the revision petitioners herein for appointment of Advocate Commissioner to note down the physical features of land bearing Sy.No.470 in an extent of Ac.0-35 gunats of Kothur Village was dismissed.

2. Brief facts leading to filing of this revision are as follows:-

Respondent herein filed O.S.No.112/2013 seeking permanent injunction and in the said suit, they filed I.A.No.574/2013 seeking temporary injunction and when the said application was coming on for enquiry, the revision petitioners herein filed I.A.No.38/2014 for appointment of an Advocate Commissioner and the same was resisted by plaintiff on the ground that the request of the revision petitioners amounts to collection of evidence, which cannot be permitted and the trial Court, on a consideration of contentions and rival contentions of both parties, accepted the objection of plaintiff and dismissed the application. Now aggrieved by the same, present revision is preferred.

3. Heard both sides.

4. Advocate for revision petitioner submitted that the present application for appointment of Advocate Commissioner is not for collection of evidence and only to bring the existing facts to the notice of the Court for deciding I.A.No.574/2013, which is filed for grant of temporary injunction. He submitted according to plaintiff, he has raised horse-gram crop and put up a fencing to the land, which is factually incorrect and in fact, the suit land is a barren land vested with the Government being used as market yard and to prove the same, visit by Advocate Commissioner is necessary. He further submitted that the learned trial Judge erroneously dismissed the application, therefore, the impugned order dated 27-02-2015 is liable to be set aside.

5. On the other hand, Advocate for respondent submitted that trial Court, by relying on a judgment of this Court, dismissed the application holding that present request for appointment of Advocate Commissioner amounts to collection of evidence and that trial Court has not committed any illegality or irregularity and that there are no grounds to interfere with the orders of the Court below.

6. Now the point that would arise for my consideration in this revision is whether the orders of Courts below are legal, proper and correct?

7. **Point:-** As seen from the material papers, it is the specific case of petitioners herein that the schedule property was never cultivated since last 30 years and it is being used as market yard by putting Vegetable Kanta. On the other hand, it is the contention of the plaintiff that he raised horse-gram crop in the schedule land and also fenced it. When the plaintiff has come to the Court and sought for temporary injunction, the burden is on him to *prima facie* show and prove the allegations that are alleged in the plaint and it is not for the defendants to disprove the plaint averments. In an interlocutory application, Courts have to decide the matter on the basis of *prima facie* material like affidavits and documents. Further contentions and rival contentions of both parties with regard to identification, location etc of the land has to be appreciated on the basis of oral and documentary

evidence and appointment of Advocate Commissioner is only required,

if there is any possibility of changing the physical features.

As seen from the material, there is no such allegation and the main thrust of the revision petitioners is to disprove the contention of the plaintiff and to show that he has not raised any horse-gram crop in the schedule land. As rightly observed by the trial Court that purpose would definitely amounts to collection of evidence, which cannot be permitted and the trial Court by relying on two decisions of this Court, disallowed the claim of the revision petitioners and I do not find any wrong in the finding of the trial Court.

8. Advocate for revision petitioners submitted that petitioners may be given liberty to renew the request of appointment of Advocate Commissioner during trial, if necessitated.

9. Considering the facts of the case and material on record, I am of the view that there are no grounds to interfere with the findings of the trial Court and the revision is dismissed and the request of Advocate for petitioners cannot be considered at this stage and if such a right is available, the petitioners can as well avail that remedy. No costs.

10. As a sequel, miscellaneous petitions, if any, pending in this revision, shall stand dismissed.

JUSTICE S. RAVI KUMAR

Date:17.04.2015

mrh