

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

CIVIL REVISION PETITION No.4465 of 2014

ORDER:

This Revision is filed challenging the order dated 12.11.2014 in I.A.No.533 of 2014 in O.S.No.38 of 2011 on the file of Senior Civil Judge, Hindupur.

2. The petitioner herein is the plaintiff in the above suit. The said suit was filed seeking perpetual injunction restraining the respondent from interfering with the possession and enjoyment of the plaint schedule property.

3. He also filed I.A.No.88 of 2011 in the suit, seeking temporary injunction pending the suit restraining the respondent from interfering with his possession and enjoyment over the petition schedule property. The said I.A. was allowed on 17.04.2013 after contest.

4. Subsequently, an application seeking police-aid was also filed by the petitioner and such police-aid was also granted.

5. Thereafter, the respondent herein filed I.A.No.533 of 2014 alleging that the petitioner took advantage of the interim injunction granted in his favour and also the police-aid order and then encroached into the property of the respondent, disturbed his possession and enjoyment, and therefore, it is necessary to appoint an Advocate Commissioner to survey the schedule property and decide whether the petitioner is in possession of the land falling within the boundaries mentioned in the schedule to I.A.No.88 of 2011 or not with the assistance of the Mandal Surveyor.

6. This application was opposed by the petitioner contending that in the order passed by the Court below in I.A.No.88 of 2011, the prayer for appointment of Advocate Commissioner or for survey of the property was rejected. It was further contended that the respondent did not file any documents to show his bonafides and he had no right to seek survey of the land with the help of Advocate Commissioner.

7. By order dated 12.11.2014, the Court below allowed the said I.A. holding that appointment of Advocate Commissioner to note down whether the petitioner is enjoying the property within specific boundaries of the schedule mentioned in I.A. would not cause any loss to either parties.

8. Challenging the same, this Revision is filed.

9. Learned counsel for the petitioner contended that in I.A.No.88 of 2011, the Court below has refused to direct a survey and that it ought not to have directed a survey through an Advocate Commissioner in I.A.No.533 of 2014.

10. I am unable to agree with the said admission.

11. It is the specific case of the respondent that taking advantage of the interim injunction granted in I.A.No.88 of 2011 and the police-aid granted subsequent thereto for its implementation, the petitioner had encroached into the property of the respondent. Having regard to this serious allegation which can only be verified through an Advocate Commissioner and a Surveyor, I am of the opinion that the Court below was right in appointing Advocate Commissioner to note down whether the petitioner is enjoying the property within specific boundaries of the schedule mentioned in I.A.No.88 of 2011 or not.

12. I, therefore, see no ground to interfere with the order passed by the Court below warranting interference of this Court under Article 227

of the Constitution of India.

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

The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

M.S.RAMACHANDRA RAO, J

June 12th, 2015.
ssp