

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1493 of 2013

ORDER :

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.04.02.2013 in I.A.No.1405 of 2012 in O.S.No.6 of 2005 on the file of Senior Civil Judge, Karimnagar.

2. The petitioners herein are defendants in the above suit.

3. The respondents/plaintiffs filed the suit for a perpetual injunction restraining petitioners from interfering with their alleged possession and enjoyment of respondents over the suit schedule property. They described the plaint schedule property as a vacant site/plot.

4. Written statement was filed by petitioners opposing the suit claim and contending that the suit schedule properties are the joint family properties of 1st defendant and another. They denied the title as well as possession of the respondents and contended that there is an irrigation well existing in the northern share of the 1st defendant's husband's brother and a pipeline was also laid down from the said well, and that there was a crop of maize and chilli standing on the suit schedule land.

5. The petitioners filed I.A.No.1405 of 2012 under Order 26 Rule 9 C.P.C. to appoint an Advocate-Commissioner to note down the physical features of plaint schedule property contending that the suit schedule land is being claimed as a residential plot by respondents, when in fact, it is actually an agricultural land containing an outlet of irrigation pipeline wherein paddy is being transplanted.

6. Counter-affidavit was filed by respondents stating that appointing an Advocate-Commissioner in the facts and circumstances of the case amounts to gathering of evidence.

7. By order dt.04.02.2013, the Court below dismissed the said application. It held that it is the duty of respondents to prove their possession and enjoyment of the suit schedule property as on the date of filing of suit; that both parties had adduced evidence; and at this point of time, if the Advocate-Commissioner is appointed, it would amount to collecting of evidence with regard to possession.

8. Challenging the same, the present Revision is filed.

9. Heard Sri M. Rajamalla Reddy, counsel for petitioners; and Sri M.Arvind, counsel for 2nd respondent.

10. Although the counsel for petitioners contended that the Court below ought to have appointed an Advocate-Commissioner to note down the physical features of suit schedule property, since this is not a suit where there is an issue of localization of suit schedule property or there is any dispute between neighbours alleging encroachment by one into the property of another, it is not a fit case to appoint an Advocate-Commissioner to note down the physical features as sought by petitioners. If an Advocate-Commissioner is appointed in a case like the present one, it would amount to allowing a party to gather evidence about his possession which cannot be permitted.

11. Therefore, I do not find any error or infirmity in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India. Accordingly, the Civil Revision Petition is dismissed. No order as to costs.

12. As a sequel, miscellaneous petitions pending, if any, in this Revision shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28.10.2015

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