

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4311 of 2015

ORDER :

The petitioner/plaintiff in O.S. No.14 of 2011, on the file of Principal Junior Civil Judge, Rayachoty, filed the suit for the relief of permanent injunction against the four defendants viz., Shaik Mahammad Jaffar, The Revenue Divisional Officer, The Tahsildar, The Zonal Manager, A.P.Industrial Infrastructure Corporation Limited in relation to the plaint schedule property Ac.0-40 cents in S.No.578/7 of Rayachoty limits within the boundaries prescribed in the plaint, from the written statement contest of the defendants in the pending suit, after commencement of trial, from the issues settled, after P.Ws 2 and 3 examined while the matter was coming for further evidence of plaintiff, on 06.03.2015 filed I.A. No.260 of 2015 seeking to appoint an Advocate-Commissioner to note down the physical features and to take measurements of the plaint schedule property with the assistance of Mandal Surveyor and to submit report with rough sketch, with averments of the contest by defendants saying 4th defendant allotted to Federation of Sericulture on 23.08.1985, Ac.0-27 ½ cents in S.No.278/6 and in S.No.278/1 and the Federation of Sericulture constructed building therein and erected a fencing and 4th defendant allotted ac.0-35 cents to one

Star Cement Bricks entity in S.No.578/1 in January, 2002 and 4th defendant also executed sale agreement in favour of 1st defendant on 17.08.2010 in respect of plaint schedule property of Ac.0-31 cents in S.No.578/1 part and S.No.578/6 part and handed over possession and 1st defendant started construction of the factory building therein later as per the written statement of the 1st defendant. In the course of cross-examination of plaintiff/P.W-1 by 1st defendant, it was suggested that Ac.0-09 cents in S.No.478/6 was allotted by 4th defendant to Federation of Sericulture which constructed a building. It is averred that there is no Sericulture building in the suit property muchless the 1st defendant established with any entity name Omar Products with any construction in the suit property and in these circumstances, it is necessary to appoint an Advocate-Commissioner for the reliefs sought.

2) Said affidavit petition was opposed by counter of 1st defendant saying the defence of the defendants is revenue department acquired the suit property and handed over to 4th defendant and 4th defendant allotted some of the extents which include the suit property in the survey numbers to others for the industrial purposes etc., and the present filing of the commission petition is to fish out information at the fag end of plaintiff's

evidence and it cannot be allowed to collect information despite no dispute regarding the physical features for any requirement to note down through commission appointment and sought for dismissal.

3) It is from respective contest, the learned Junior Civil Judge by order dated 05.05.2015 observed in para No.7 that on perusal of the records, the Court is of opinion that in a suit for injunction, a Commissioner cannot be appointed to ascertain as to who was in possession as on suit date, the factum of possession can be decided only on the basis of oral and documentary evidence to be adduced by parties during trial and the purpose sought for commission appointment to collect information is impermissible and thereby dismissed the petition.

4) It is said order, now impugned in the revision by the unsuccessful petitioner/plaintiff. The respondents 1 to 4 (defendants) were served by personal service and proof filed in U.S.R. No.8994 of 2015. But for the 4th respondent entity through Advocate, others did not put forth appearance.

5) Heard the learned counsel for the petitioner Sri V.B.Subrahmanyam and the learned counsel for the 4th respondent Sri P.Roy Reddy and perused the material on record.

6) It is not a case of existence of the plaint schedule property is in dispute. There could be nothing shown of the order is unsustainable though what is said much against the order is a laconic one with lack of reasons and without discussion of the pleadings in arriving a finding.

7) No doubt, a Commissioner can be appointed or not depends upon the factual matrix of each case to consider, for hard and fast rule of Commissioner cannot be appointed even in a suit for injunction. What is the law settled is that a Commissioner cannot be appointed to fish out information. Otherwise purpose of commission is to collect evidence which is permissible to reduce much oral evidence when serves purpose by filing report as form part of Court record about any existing physical features or any measurement and demarcation as the case may be.

8) Having regard to the above, it is after completion of evidence of both sides, the trial Court, if considers any necessity of any identity dispute and boundary demarcations of the existing plaint schedule property, can appoint a Commissioner for such purposes on a fresh application filed by any of the parties and by giving such liberty, if any, to decide on own merits uninfluenced by this order, the petition is disposed of.

9) In the result, the revision petition is disposed of subject to observations made above and with no costs. Miscellaneous petitions pending, if any, shall stand closed.

DR.JUSTICE B.SIVA SANKARA RAO

Dt.24.03.2016
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