

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.1531 of 2016

ORDER :

The plaintiffs aggrieved by the order of the Principal Junior Civil Judge, Nandyal, in I.A.No.1432 of 2015 dated 12.02.2016, which is filed by defendant No.1 pending suit for bare injunction for appointment of an Advocate Commissioner to measure and demarcate the property covered by the plaint schedule and also note down the physical features, maintained the revision against defendant Nos.1 to 3 by showing defendant Nos.2 and 3 not necessary parties to the revision.

2. The contention of the revision petitioners is that the lower Court gravely erred in appointing Advocate Commissioner to fish out information, which is not contemplated in a suit for injunction to appoint and the order is perfunctory and without assigning any reasons, much less of the need, thereby the impugned order is liable to be set aside and sought for allowing the revision therefrom.

3. Whereas, it is the contention of learned counsel for the defendant No.1-respondent No.1 to the revision, who was the successful petitioner in I.A.No.1432 of 2015 in seeking appointment of the Commissioner, that order of the lower Court holds good and for this Court while sitting in revision there is nothing to interfere.

4. Heard and perused the material on record.

5. Law is fairly settled for saying there is no hard and firm rule of a Commissioner cannot be appointed in a suit for bare injunction as it all depends upon the facts and circumstances of each case. Coming to the

subject of the lis, it lies in Sy.Nos.674/1 and 674/2. The plaint plan 'ABCD' marked portion is claimed in Sy.No.674/1. The plaint schedule consists of two items, of which one is claimed as property of plaintiff No.1 and abutting to it rasta claimed provided of Ac.0.03½ cents to plaintiff Nos.1 to 5, which is in Sy.No.674/1 within the boundaries described and the other item is claimed as property that of plaintiff Nos.2 to 5 in Sy.No.674/1 shown in plan as in 'EFGH' to an extent of Ac.0.02 cents. The claim of the plaintiffs is that father of defendant No.1, by name Alluri Alfred, having purchased the property in Sy.Nos.671/1 and 674/2 and sold out of it Ac.1.11¾ cents to different persons and the plaint schedule items supra are among the same. The claim of the defendant No.1 is that the property claiming by the plaintiffs belong to him and plaintiffs are falsely making a claim over it without any manner of right.

6. A perusal of the pleadings show defendant No.1's father only alienated certain extents including to some of the plaintiffs and the lis is covered by Sy.No.674/1 among the two items Sy.Nos.674/1 and 674/2. The plaintiffs placed reliance upon the plaint plan to correlate to the plaint schedule on paper and same is now in dispute by the defendant No.1 in seeking for appointment of an Advocate Commissioner. Thereby it requires localization and demarcation and to find out after the so-called alienations reflected in the plan to be proved subject to title deeds and what remain further of the defendant No.1 in occupation of the plaintiffs, if any, is the question from the respective contentions in

the written statement and plaint in answering the lis and for that purpose, appointment of Advocate Commissioner is necessary that what the lower Court when felt in the factual scenario, for this Court while sitting in revision there is nothing to interfere, but for to say it is only after measurement and demarcation with reference to the plaint plan and the respective title deeds of the parties, including to answer the work memo, if any, within the scope to find out the respective extents by identification on land including the lands of plaintiffs and defendant No.1 and also to note down the plaint plan so-called Ac.0.03½ rasta, if any, and Ac.0.02 cents of land, if any, and to note down only existing physical features of the same.

7. With the above observation, the revision is disposed of.
8. Miscellaneous petitions pending, if any, shall stand closed. No costs.

26th September 2016.

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Dr. B. SIVA SANKARA RAO, J