

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.6203 of 2016

ORDER:

This Revision arises out of an order passed by the trial Court, appointing an Advocate Commissioner to harvest the paddy crop in Item Nos.3 and 4 of suit D-schedule properties.

2. Heard Mr. K. Sai Rama Murthy, learned counsel for the petitioner and Mr. V.S.R. Anjaneyulu, learned counsel appearing for the respondents 1 and 2, who were the plaintiffs in the suit.

3. The respondents 1 and 2 herein filed a suit in O.S.No.19 of 2016 seeking a declaration that the 2nd respondent herein is the owner of suit A and B-schedule properties and the 1st respondent herein is the owner of the plaint C and D-schedule properties. The claim to ownership of plaint B, C and D-schedule properties was on the basis of a registered Will dated 05-12-2007 and a Codicil dated 18-06-2009.

4. Pending disposal of the suit, the respondents 1 and 2/ plaintiffs filed an application in I.A.No.144 of 2016 seeking an interim injunction to protect their possession. It appears that the application for injunction is pending adjudication.

5. In the meantime, the respondents 1 and 2 filed another Interlocutory Application in I.A.No.702 of 2016 seeking appointment of an Advocate Commissioner for harvesting the paddy crop in items 3 and 4 of suit D-schedule properties. The said application was allowed by the trial Court forcing the 1st defendant in the suit to come up with the above revision.

6. When the above revision came up for admission, this Court passed an interim order on 16-12-2016 permitting the Commissioner to proceed with the harvest, in such a manner that the soil as well as produce/crop is not spoiled. It also directed the Advocate Commissioner to keep them in safe custody.

7. But subsequently, the respondents 1 and 2 filed an affidavit enclosing a copy of the interim report of the Advocate Commissioner to the effect that there was obstruction from third parties. The relevant portion of the interim report of the Advocate Commissioner reads as follows:

“Today i.e. 17-12-2016 at about 10.30 a.m., I along with petitioners, their advocate and harvesting machine went to item No.4 of plaint B-schedule properties with a view to execute my warrant. Then, some other persons those who are no way connected with the suit proceedings obstructed us from harvesting the crop and some galata and thereby I was constrained to return back without any execution of warrant in view of the obstruction made by the third parties. Accordingly, I have reported the same to the S.H.O. Bantumilli P.S. and requested for their help to execute the warrant. But the S.H.O. Bantumilli expressed his inability to provide police aid and issued a report dt.17-12-2016 for the report given by me.

Except the above stated third parties, the respondents or their advocates were not present at the plaint schedule property, though they have received prior notice.

Therefore, in view of the above stated circumstances, I am unable to execute the warrant without police aid and I have intimated the same to the petitioners and their advocate to take appropriate steps for peaceful execution of the warrant entrusted to me. Hence, this 2nd interim report.”

8. In the light of what is stated by the Advocate Commissioner, the respondents 1 and 2 seek appropriate directions.

9. As rightly contended by the learned counsel for the petitioner/1st defendant, the normal rule is that no Commissioner can be appointed, in a suit for declaration where the issue of possession

is yet to be decided and also when the application for injunction is yet to be decided. A plaintiff, who could not secure an interim order of injunction, cannot successfully get an Advocate Commissioner appointed for harvesting the crops.

10. But unfortunately, the case on hand is riddled with complications. There are 2 plaintiffs and 52 defendants in the suit. All of them claim only under a common ancestor viz., Yenduri Sri Anjaneyulu. The fight is actually between children of the brothers and sisters of Anjaneyulu.

11. One main distinction between the claim of the plaintiffs and the claim of the defendants is that the plaintiffs claim absolute title to all the suit schedule properties by virtue of a registered Will and registered Codicil. But the contesting defendants claim only a share, as they have instituted a suit for partition.

12. The fact that there are standing crops in items 3 and 4 of suit D-schedule properties is admitted by the rival parties. Both parties are in agreement also on the point that the standing crop is ripe for harvesting. The parties also agree that if the standing crop is not harvested, it will go a waste.

13. In such circumstances, a Civil Court has only two options namely, a) to permit either of the rival claimants to harvest the standing crop; or b) to appoint an Advocate Commissioner to harvest the crop. If either of the rival claimants is allowed to harvest the standing crop, the Court has to first record a finding regarding possession. In view of the fact that the application for injunction is still pending, it is not possible to record a finding of possession.

Therefore, the trial Court was right in choosing the only other alternative namely that of appointing an Advocate Commissioner.

14. There was also one more justification for the Court below to appoint Advocate Commissioner. In the affidavit in support of their application for appointment of an Advocate Commissioner, the respondents 1 and 2/plaintiffs claimed that the rival parties are men with muscle power and money power and that they may act highhandedly. In the counter affidavit filed by the petitioner herein, they have also admitted that there may be a law and order problem. Paragraphs 13 and 14 of the counter affidavit filed by the present revision petitioner, before the trial Court reads as follows:

“This respondent further submits that on 18.12.2015, the petitioners with anti social elements made a hulchal in the village and created fear in surrounding area and they have been trying to make dacoit acts at that stage, this respondent and others informed the same to Kruthivennu Police. After receipt of the respondents, the Kurthivennu police rushed to the spot and red-handedly arrested the petitioners and others and detained them in the station. To that effect, an FIR No.127/2016 was registered against them and a copy of the said FIR is enclosed herewith for kind consideration of this Hon’ble Court and the said fact was telecasted by the 99 T.V. channel.

This respondent submits that the conduct of the parties reveal the above said fact without deciding their rights under alleged Will by hook or cook they are trying to enter into the schedule property and trying to create fear in the surrounding area people and without having any rights, the petitioners created a sham documents in the name of third parties. The counter contents of this respondent may be read as part and parcel of the counter in I.A.No.144/2016 in O.S.No.19/2016.....”

15. Therefore, allowing one or the other of the parties to harvest the standing crop would certainly lead to a law and order issue. Therefore, the only way of preventing a civil litigation from getting converted into a criminal case is to appoint an advocate commissioner.

16. In other words, the appointment of an Advocate Commissioner may serve two purposes namely, a) the saving of the standing crop, which may otherwise go waste; and b) the prevention of a law and order problem in the locality. Hence, the order of the trial Court does not call for any interference. However, the order of the trial Court may have to be fine tuned, in view of the subsequent development, reflected in the interim report filed by the Commissioner. Therefore, without prejudice to the rights of the rival claimants, the Civil Revision Petition is disposed of to the following effect:

- 1) The Deputy Superintendent of Police within whose jurisdiction the lands in items 3 and 4 of the plaint D-schedule properties are located, shall provide adequate protection to the Advocate Commissioner appointed by the Court below to harvest the standing crop in items 3 and 4 of the suit D-schedule properties;
- 2) If it is possible to harvest the standing crop without use of machinery, the Advocate Commissioner may make an attempt. But if it is not possible, he may use machines for harvesting the crop. However, he shall ensure that no damage is caused to the soil or the crop;
- 3) The harvested crop may be stored by the Advocate Commissioner temporarily in a godown for eventual sale, as per the directions of the trial Court;
- 4) Alternatively, either of the rival claimants may make offers to the Advocate Commissioner for the purchase of the harvested

crop. Whoever offers the highest amount, as between the rival claimants, shall be handed over the harvested crop. The money offered shall be deposited in Court and the Court may deal with the same in accordance with law.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V.RAMASUBRAMANIAN, J

Date: 29-12-2016

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