

HON'BLE SRI JUSTICE G. SHYAM PRASAD

CIVIL REVISION PETITION No.2672 OF 2016

ORDER:

This Civil Revision Petition arose out of the order dated 04.04.2016, passed in I.A. No.353 of 2016 in Original Suit No.165 of 2012 by the Senior Civil Judge, Vizianagaram, (for short, 'the trial Court').

The revision petitioners are the defendants and the respondents herein are the plaintiffs in O.S. No.165 of 2012. The revision petitioners, being aggrieved by the impugned order of the trial Court, preferred this Revision on the ground that they filed an affidavit under Order XXVI Rule 9 of C.P.C. for appointment of an Advocate Commissioner to localize the suit schedule property and to note down the physical features to facilitate the Court to arrive at a just decision. The trial Court considering the contentions of both sides has arrived at a conclusion that the petitioners are not entitled for appointment of an Advocate Commissioner on the ground that the respondents-plaintiffs filed a suit for injunction and if a Commissioner is appointed in this case, it amounts to gathering of evidence and the appointment was sought not only for locating the land but also for noting down the physical features of the property, which is not in dispute, in this case.

In paragraph 10 of the order, the trial Court has clearly observed that the revision petitioners have claimed Ac.0.69 cents of land in Survey No.19/4 and Ac.0.32 cents of land in Survey No.4/4 and the said items of property are nearby the plaint schedule lands and they did not raise any dispute with regard to the schedule of the respondents-plaintiffs. On these grounds, the trial Court rejected appointment of Advocate Commissioner to survey and note down the physical features of the property.

Learned counsel for the revision petitioners submits that they are having lands in Survey No.19/4 to an extent of Ac.0.69 cents and in Survey No.4/4 to an extent of Ac.0.32 cents, which are situated near the suit schedule property and for affective adjudication of the matter, appointment of the Advocate Commissioner is required in this case.

Learned counsel for the respondents-plaintiffs submits that absolutely there is no necessity for appointment of an Advocate Commissioner in this case, as there is no dispute with regard to physical features of the suit schedule property. It is not the case of the revision petitioners that there are any boundary disputes of the plaint schedule property. It is not even their case that they had any property in Survey No.19/2 or 4/2 and that they have not stated anything in their statement raising these objections and

that they have not made any counter claim claiming that their lands are situated in the above survey numbers.

Heard the submissions on either side and the sole point that arises for consideration in this case is:

Whether there is any requirement of appointment of an Advocate Commissioner to note down the physical features, and location, of the schedule property and whether the impugned order suffers from any illegality?

POINT: The observation of the trial Court is that the respondents-plaintiffs claimed their property is in Survey No.19/2 of an extent of Ac.0.69 cents and in Survey No.4/2 of an extent of Ac.0.32 cents and the lands claimed by the revision petitioners-defendants situate near the suit schedule property.

Learned counsel for the revision petitioners-defendants, in support of their contention, relied on the decisions of this Court in ***Shaik Mohammad Rafi Vs. Correspondent of Saint Francis Integrated English Medium School, Dommarapalem, Venkatagiri, SPSR Nellore District***^[1] and ***Ch. Sugunamma Vs. District Collector, Hyderabad and others***^[2]. In the decisions relied upon by the revision petitioners, there was no dispute with regard to identity of the suit schedule property. In the instant case, the suit schedule property claimed by the respondents-plaintiffs is in Survey Nos.19/2 and 4/2; whereas, the property claimed by the revision petitioners-defendants is situated in Survey Nos.19/4 and 4/4. If at all the revision petitioners-defendants intend to prove their case of getting the lands measured, they can get the land measured by a mandal surveyor or a private surveyor and submit the report before the Court to prove their case and take steps for examination of their surveyor. There is no need at this stage to appoint an Advocate Commissioner to get the lands surveyed by a surveyor or to note down the physical features of the property.

Accordingly, with the above observation, the Civil Revision Petition is dismissed. No order as to costs.

In consequence, miscellaneous petitions, if any, pending in this Revision shall stand dismissed.

G. SHYAM PRASAD, J

Date: 17-06-2016.
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[\[1\]](#) 2014 (1) ALD 537
[\[2\]](#) 2014 (4) ALT 155