

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

CIVIL REVISION PETITION NO.4819 OF 2016

ORDER:

This Civil Revision Petition is filed by the petitioners/defendants aggrieved by the order dated 23.08.2016 in I.A.No.410 of 2016 in O.S.No.254 of 2015 on the file of the Court of the Principal Junior Civil Judge, Proddatur, whereunder the learned Judge has dismissed the petition filed by the petitioners/defendants under Order 26 Rule 9 of C.P.C. for appointment of an Advocate commissioner to note down the physical features and for survey of the land in an extent of Ac.2-70 cents out of Ac.5-40 cents in Sy.No.85 of Proddatur Village and also the land in an extent of Ac.2-50 cents in Sy.No.85 of Proddatur village and suit property of the respondent/plaintiff and fix boundary stones with the help of Mandal Surveyor, Proddatur.

The respondent/plaintiff filed O.S.No.254 of 2015 against the petitioners/defendants seeking perpetual injunction decree in respect of the plaint schedule land covered by Sy.No.85 (sub-division Sy.No.85/A Pyki) to an extent of Ac.4-80 cents. The defendant is shown as the Northern boundary owner in Sy.No.85. The plea of the respondent/plaintiff in the suit is that he is the lawful owner of the plaint schedule property, having purchased from its owner for a valuable consideration, and the defendants are trying to meddle with his properties. While so, the defendants filed written statement *inter alia* contending that the plaint schedule property is not in an extent of Ac.4-80 cents on ground and the plaintiff is not in possession and enjoyment of the said extent of Ac.4-80 cents and the plaintiff is wrongly claiming more than the actual extent of the land on ground. The trial in the suit has not yet begin.

While so, the petitioners/defendants filed I.A.No.410 of 2016 seeking appointment of an advocate commissioner for the purposes mentioned supra. The respondent/plaintiff opposed the petition. The trial Court in its impugned order dated 23.08.2016 dismissed the said petition with the observation that as per the contention of the defendants the vendor of the petitioner sold excess extent than entitled and admittedly the Tahsildar returned the applications filed by both the parties for fixing the boundaries on the ground that the claimants were claiming land in excess than existing in the RSR which is a title dispute to be decided by a Civil Court, the application to appoint an advocate commissioner for fixation of boundaries basing on the documents will not serve any purpose. The trial Court further observed that the petitioners can prove the contentions that the respondent was having suit property only on paper, but not on ground. With the aforesaid observations, the trial Court dismissed the petition. Hence, the Revision.

Heard the learned counsel for the petitioners, Sri D. Krishna Murthy and learned counsel for the respondent, Sri M. N. Narasimha Reddy, and with their consent the Civil Revision Petition is disposed of at the stage of admission.

Upon hearing both the parties and on perusal of the impugned order, this Court approves the observations of the trial Court. The contention of the petitioners/defendants in the suit is that the respondent/plaintiff claims more extent than what was sold by his vendor and what was entitled to by his vendor. In such view of the matter, the burden is on the respondent/plaintiff to establish his case to the effect that he purchased the plaint schedule property covering Ac.4-80 cents, he is entitled to that extent and he has been in possession

of the same by the date of filing of the suit so as to deserve perpetual injunction decree.

In that view of the matter and as the trial has not yet been commenced, at this stage, the appointment of advocate-commissioner, as observed by the trial Court would not serve any useful purpose even if Commissioner is directed to fix the boundaries with the help of the surveyor. On the other hand, after trial is completed, the Court will have a better comprehension over the contentions raised by each side and at that stage it can ascertain whether the Commissioner can or cannot be appointed basing on the evidence adduced. Therefore, at this stage, the appointment of Commissioner does not warrant.

In the circumstances, this Civil Revision Petition is disposed of with the observation that the petitioners/defendants or for that matter the respondent/plaintiff is at liberty to apply to the trial Court for appointment of advocate commissioner after trial is completed, in which case, the trial Court shall consider the said application on merits and pass appropriate order. No costs.

Miscellaneous petitions pending, if any, in this Revision shall stand closed.

U. DURGA PRASAD RAO, J

Dt. 18.11.2016

GBS