

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.1114 of 2016

ORDER:

Present revision is filed by the plaintiff against the order dated 05.11.2015 dismissing I.A.No.764 of 2015 in I.A.No.202 of 2015 in O.S.No.160 of 2015, which is an application for appointment of an Advocate Commissioner filed under Order XXVI Rule 9 C.P.C. covered by the impugned dismissal order giving liberty to file fresh application if necessary during trial pending disposal of the injunction application, pending suit for permanent injunction restraining defendants 1 to 3, their men from interfering with the plaintiff's possession and enjoyment of Ac.6.36 guntas out of Ac.14.02 guntas of land in Survey No.71/ A/ 1 of Nadergul Village, Saroornagar Mandal, Panga Reddy District.

2. The contentions in the grounds of revision are that the trial Court went wrong in not considering the request, even the boundary line between the land of the plaintiff of Ac.6.36 guntas and the plaintiff's brother's land which consists of Ac.7.06 guntas, out of which Ac.1.06 guntas sold to one Eswaraiah and remaining Ac.6.00 guntas admittedly the defendants purchased, for there is no rule that before settlement of issues or before commencement of trial, no commissioner could be appointed, the trial Court could have

been appointed the advocate commissioner at least for the purpose of demarcation to lessen much oral evidence in this regard of the boundary demarcation for not inclined even to note the physical features in saying that tantamounts fishing of information in a suit for bare injunction. Thereby, sought for allowing the revision to appoint advocate commissioner at least for measurement and demarcation of the land with reference to the revenue records and the respective sale deeds. The counsel placed reliance in support of his contentions the expression of the Single Judge of this Court in *Bandaru Mutyalu v. Palli Appalaraju*¹.

3. Whereas, it is the submission of the learned counsel for the revision respondents, who are the defendants/ respondents before the trial Court that the trial Court having been fresh in mind of the facts including while hearing the injunction application in I.A.No.202 of 2015 with reference to the pleadings therein also, when rightly dismissed the application, for this Court while sitting in revision, there is nothing to interfere. It is also the submission that when the boundaries specifically mentioned, so also the extent of the plaintiff in the plaint schedule, that is also the injunction petition schedule and that is not in dispute by the defendants of his entitlement to the extent but for other contest in non-

¹ 2013(6)ALT 26

suiting him to the permanent injunction relief, there is no any need to appoint an advocate commissioner even to measure and demarcate the land in question.

4. Heard and perused the material on record.

5. No doubt, in *Bandaru Mutyalu (supra)* referring to the Division Bench expression of this Court in *C.Veeranna v. C.Venkatachalam*², that was placed reliance by another Single Judge Bench expression of *Savitramma v. B.Changa Reddy*³ that in turn placed reliance to the conclusion in saying there is no principle of law or rule or provision that in a suit for bare injunction, no commissioner can be appointed to measure and demarcate the property so also even at the initial stage before commencement of trial, leave about even an ex parte advocate commissioner can be appointed as held by the Division Bench (*supra*) with no notice even required for such appointment, but for referring to Order XXVI Rule 18, requirement of notice only for execution of the warrant by the commissioner appointed even ex parte and thereby, all depends upon the discretion of the Court from the factual matrix of each case of any necessity to consider either on the request of plaintiff or on the request of the defendant or defendants as the case may be. Once such is the case, as the lower Court observed that it is left open at or before commencement of the trial to the plaintiff to make an

² 1958 ALT 792=AIR 1959 AP 170

³ 1988(1) ALT 353

application if necessary for measurement and demarcate and there are no grounds to consider appointment of advocate commissioner to note down the physical features that too in the temporary injunction application, for this Court practically, there is nothing to interfere by sitting in revision but for to say plaintiff is given liberty by virtue of this order, with detailed facts to file fresh application for demarcation of his property with reference to the title deeds of him and that of the defendants to draw the boundary line between that of the plaintiff and defendants and then to note down the physical features existing on land if any.

6. Accordingly, this Civil Revision Petition is disposed of. No order as to costs.

7. Miscellaneous petitions, pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date:16.09.2016
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