

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.826 of 2011

ORDER :

This Revision is filed challenging the order dt.19.10.2010 in I.A.No.673 of 2009 in O.S.No.575 of 2003 on the file of VI Additional Senior Civil Judge, Fast Track Court, at Medchal, Ranga Reddy District.

2. The petitioner herein is plaintiff in the above suit.

3. He filed the suit for a perpetual injunction restraining the respondent from interfering with his peaceful possession and enjoyment of the suit schedule property. The petitioner claims that the land owned by him is located in Survey No.66 in which he has erected a shed, two bore-wells with electricity connections, a cement groundwater storage tank and a pipeline. It is his case that respondent who has land in Survey No.35 is trying to encroach his land.

4. The petitioner filed I.A.No.673 of 2009 under Order XXVI Rule 9 C.P.C. seeking appointment of an Advocate-Commissioner for noting down the physical features and structures in the suit schedule properties.

5. Counter-affidavit was filed by respondent opposing this application. The respondent denied that petitioner has right in the suit schedule property of which

petitioner claimed to be in possession. He also denied that petitioner was enjoying the alleged structures in the land. He also contended that earlier the petitioner had filed I.A.No.716 of 2008 for a similar relief which was dismissed on 21.04.2009, and the said order was also confirmed by order dt.25.08.2009 in CRP.No.3642 of 2009.

6. By order dt.19.10.2010, the Court below dismissed I.A.No.673 of 2009 observing that in a suit for injunction, respective parties have to prove their case by adducing cogent evidence, and an Advocate-Commissioner cannot be appointed for the purpose of collecting evidence. It observed that the existence of shed, bore-wells and electricity connections can also be proved by several means, and there is no necessity to appoint an Advocate-Commissioner for this purpose. It also noted that the evidence of both sides was closed long back and the matter was coming up for arguments, and at that stage this application was moved.

7. Challenging the same, the present Revision is filed.

8. A reading of contentions of petitioner as well as respondent seems to suggest that both parties are alleging that the other party is trying to encroach his land. While the land claimed by petitioner is in survey No.66, the land claimed by respondent is in Survey No.35.

Instead of seeking appointment of an Advocate-Commissioner to demarcate their respective properties with reference to their respective title deeds, this application has been filed to just note down the physical features. Even if the physical features are noted by Advocate-Commissioner it would not resolve the issue whether these structures are in Survey No.66 belonging to petitioner or in Survey No.35 belonging to respondent.

9. Therefore, in my considered opinion, no useful purpose would be served by appointing an Advocate-Commissioner for merely noting down the physical features or structures in the suit schedule property; and that application I.A.No.673 of 2009 is itself misconceived. Therefore, the Civil Revision Petition is dismissed. No order as to costs.

10. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 05-02-2016

Ndr/*