

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4545 of 2010

ORDER:

Assailing the order dated 24.08.2010 passed in I.A. No.1142 of 2010 in O.S.No.549 of 2008 on the file of the Principal Junior Civil Judge at Vijayawada, wherein an application filed under Order XXVI Rule 9 of Code of Civil Procedure (for short "C.P.C.") seeking appointment of an Advocate-Commissioner to note down the physical features of the plaint schedule property and the property of the defendants as per their respective title deeds with the aid and assistance of a qualified Mandal Surveyor, was rejected, the present Revision is filed under Article 227 of the Constitution of India.

The parties will hereinafter be referred to as arrayed in the suit.

The plaintiff filed the above suit seeking permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff over the plaint schedule property. The said suit was posted to 12.07.2010 for further evidence of the plaintiff. Since the defendants were trying to encroach and occupy the plaint schedule property, the plaintiff filed an application under Order XXVI Rule 9 and Section 151 of C.P.C., seeking appointment of an Advocate-

Commissioner. A Counter came to be filed opposing the same. By an order dated 24.08.2010 the learned Principal Junior Civil Judge at Vijayawada rejected the same. Challenging the said order, the present Revision is filed.

The learned counsel for the petitioner mainly submits that the respondents herein are trying to encroach on to the land of the petitioner and as such it would be just and necessary to appoint an Advocate Commissioner to take measurements of the properties of the plaintiff and defendants and also to file a report before the Court noting down the physical features of the property. It is said that unless an Advocate-Commissioner is appointed it would be very difficult to the Court to come to a right conclusion. The same was opposed by the learned counsel for the respondents.

A perusal of the material placed on record would show that earlier the 1st defendant herein filed O.S. No.3439 of 2003 against the plaintiff herein seeking permanent injunction restraining the defendant therein i.e., the plaintiff herein from interfering with the property which is the subject matter of dispute in the present case also. In the said case the Court appointed Advocate-Commissioner who executed the warrant with the assistance of Mandal Surveyor. In his report, the Advocate Commissioner along with Surveyor measured

the site and also noted down the physical features of the said land. The report of the Advocate-Commissioner was not challenged by the aggrieved person in the said suit. The said fact of appointing Advocate-Commissioner and submission of report is not disputed by the learned counsel for the petitioner. The trial Court after considering the material on record felt that appointment of an advocate/commissioner is not necessary as the suit was filed seeking perpetual injunction and it is for the plaintiff to prove the possession. Since the report of the Advocate-Commissioner is already available; and as the same can be either summoned or copy of the same can be obtained by the party and produced and having regard to the finding of the trial Court, I see no reason to interfere with the impugned order.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. The miscellaneous petitions, if any pending, in this Civil Revision Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 11.02.2016

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