

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5687 of 2015

ORDER:

The present Civil Revision Petition is filed by the petitioner/plaintiff under Article 227 of the Constitution of India, aggrieved by the order, dated 04.12.2015 passed in I.A.No.107 of 2015 in I.A.No.12 of 2015 in O.S.No.5 of 2015 on the file of the Junior Civil Judge, Peddapalli, wherein and whereunder an application filed under Order 26 Rule 9 of C.P.C. seeking appointment of an advocate-commissioner to inspect the suit house and to note down the physical features of each area and the structures with the help of Mandal Surveyor was rejected.

The facts in issue are as under:

The petitioner/plaintiff filed O.S.No.5 of 2015 seeking perpetual injunction restraining the defendants, their family members, agents and servants from interfering with peaceful possession and enjoyment over the house bearing No.1-92/1/1 admeasuring 285.00 square yards situated at Nagarapanchayat, Peddapalli. Along with the suit the petitioner also filed I.A.No.12 of 2015 for grant of ad-interim temporary injunction. In the said petition, respondent No.2 filed counter denying the ownership and possession of the petitioner over the suit schedule property. He also denied the ownership of the vendor of the petitioner. As such, the petitioner filed an application seeking appointment of an advocate-commissioner to note down the physical features. The respondents filed counter stating that the plaintiff filed the above petition only to drag on the matter and there is no sufficient

reason to allow the petition. By an order dated 04.12.2015 the trial Court dismissed the said petition. Challenging the same, the present Civil Revision Petition is filed.

Learned counsel for the petitioner submits that the trial Court failed to appreciate that there is a discrepancy with regard to the extent of the land claimed by the plaintiff in the plaint and the extent of the land stated by the defendant in the written statement. He further submits that the purpose for appointment of an advocate-commissioner is to avoid voluminous oral evidence

Learned counsel for the respondents submits that by appointing an advocate-commissioner the Court will not allow the petitioner to gather evidence which he could not otherwise elicit. He further submits that the petitioner filed the petition only to drag on the matter and there is no sufficient reason to allow the petition.

A perusal of the material on record would show that prior to filing of the present I.A., the petitioner herein filed I.A.No.322 of 2015 seeking for production of photographs along with C.D. containing negatives in respect of the very same property. By an order dated 18.11.2015, the trial Court rejected the said application on the ground that if I.A.No.107 of 2015 is allowed the Advocate-Commissioner would inspect the suit house and measure the existing structures of the suit house with the help of Surveyor but not on the basis of photographs. Thereafter on 14.12.2015 the present application was rejected on the ground that the advocate-commissioner cannot decide the ownership and possession of the land. But a perusal of the affidavit filed in support of the said I.A. does not anywhere refer to ownership and

possession of the land. On the otherhand, it has been filed seeking appointment of an advocate-commissioner to inspect the suit house, to note down the physical features of each area and the structures with the help of Mandal Surveyor.

In ***Bandaru Mutyalu and another v. Palli Appalaraju***^[1] a learned Single of this Court while dealing with the aspect of appointment of an advocate-commissioner before trial held as under:

“Where there is controversy as to identification, location or measurement of the land, local investigation should be done at an early stage so that the parties are aware of the report of the Commissioner and go to trial prepared. The party against whom the report may have gone may choose to adduce evidence in rebuttal.”

In ***Pilli Yadaiah and others v. Pilli Komraiah and others***^[2] another learned Single Judge of this Court while dealing with the application for appointment of commissioner held as under:

“The appointment of Advocate-Commissioner to note the physical features in view of the contradictory stands taken by the parties is essential to avoid voluminous oral evidence.”

Having regard to the judgments of this Court referred to above and since the appointment of advocate-commissioner to inspect the house site and to note down the existing structures with the help of an approved surveyor for identification may not amount to collecting evidence but on the otherhand it would help to avoid voluminous oral evidence.

Accordingly, the Civil Revision Petition is allowed setting

aside the order, dated 04.12.2015 passed in I.A.No.107 of 2015 in I.A.No.12 of 2015 in O.S.No.5 of 2015 on the file of the Junior Civil Judge, Peddapalli and consequently, I.A.No.107 of 2015 stands allowed to the extent of appointment of Advocate-commissioner to inspect the house site and to note down the existing structures with the help of an approved surveyor. The trial Court is directed to appoint the Advocate-commissioner for the said purpose. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

18.03.2016

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[\[1\]](#) (2013) 6 ALT 26

[\[2\]](#) (2013) 6 ALT 158