

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.3363 of 2015

ORDER:

Heard the learned counsel for petitioner, the learned counsel for respondents 7, 44, 47, 52, 67 & 64 and the learned Government Pleader for Arbitration for respondents 3 to 5.

2. The petitioner herein is plaintiff in O.S.No.10 of 2008 on the file of the Court of I Additional District Judge, West Godavari at Eluru (for short, trial Court). He filed the said suit for permanent injunction against the respondents herein. In the said suit, at the end of the trial, the petitioner herein filed I.A.No.476 of 2015 for appointment of an Advocate Commissioner to note the physical features, submit report with rough sketch and determine the possession of the person who is in the land. The respondents opposed the said petition. The said petition was filed with the following averment in para 3 of the affidavit.

“3. I submit that at this stage it is just and necessary to appoint commissioner with directions to weigh the suit scheduled lands to note the physical features and submit his report with rough sketch to decide the person who is in actual possession in the scheduled lands under the circumstances of the matter.”

3. The trial Court observed that the evidence of both parties was closed and the matter was coming up for arguments. It also observed that the Court can appoint Advocate Commissioner while looking into the evidence of the parties in case of any ambiguity in identity of the property. The trial Court relied on a decision of the Supreme Court in **Haryana Wakf Board v. Shanti Sarup**^[1] and ultimately dismissed the petition, by its order dated 21.04.2015, with the following observations.

“(11) A perusal of the plaint schedule, it reveals about boundaries of the properties. The petitioner did not show the ambiguity that is there in identifying the property in his affidavit filed in support of this petition. The purpose for which the petitioner simply asked for appointment of commissioner to measure the lands to note the physical features with rough sketch is only to decide the person who is in possession of the plaint schedule lands. In **Parepally Satyanarayana v. Vutukuri Meeneder Goud**, reported in 2008

(1) ALT 660, it was held that in an injunction suit, the purpose of appointment of a commissioner cannot be to find out as to who is in possession of the property. Commissioner cannot decide who is in the possession of land. Prima-facie the petition affidavit discloses that it is filed for gathering evidence about possession of property by noting physical features. The petitioner is not entitled to do so. He has to establish the possession and enjoyment of the property by adducing evidence and filing relevant documents in a suit for permanent injunction. The burden lies to establish the possession and enjoyment over the suit schedule property primarily lies on the plaintiff/petitioner. Hence, the reason assigned seeking for appointment of commissioner is not convincing and proper. As such on that score petitioner cannot ask for appointment of advocate-commissioner. Therefore, the petition is liable to be dismissed.”

4. This Court sees no ground to differ from the observation made by the trial Court in its reasoned order. Hence, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous Petitions, if any pending, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 12.02.2016
TJMR

[\[1\]](#) (2008) 8 SCC 671