

HON' BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.833 of 2017

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the orders in I.A.No.1461 of 2013 in O.S.No.309 of 2011 dated 18.10.2016 on the file of the Senior Civil Judge Court, Khammam, Khammam District.

2. Heard the learned counsel for the petitioners.

3. The facts leading to filing the present petition are briefly as follows:

The petitioners herein have filed O.S.No.309 of 2011 on the file of the Senior Civil Judge, Khammam against the respondents seeking perpetual injunction in respect of an extent of Ac.1.15 guntas in Survey No.149/ E/ 1 and Ac.0.21 guntas in Survey No.150 of Pakabanda village of Khammam Urban Mandal. The respondents herein have filed O.S.No.477 of 2011 on the file of the Principal Junior Civil Judge, Khammam against the petitioners herein seeking perpetual injunction in respect of the suit schedule property. Subsequently, O.S.No.477 of 2011 was transferred to Senior Civil Judge Court, Khammam. Pending suit, the petitioners herein filed I.A.No.1461 of 2013 for appointment of advocate commissioner. The respondents herein filed counter opposing the petition. After affording a reasonable opportunity to both parties, the trial Court dismissed the petition.

4. The predominant contention of the learned counsel for the petitioners is that the trial Court dismissed the petition on erroneous grounds. He further submitted that even if the advocate commissioner is appointed, no prejudice would be caused to the respondents. It is not

in dispute the petitioners herein have filed O.S.No.309 of 2011 whereas the respondents herein have filed O.S.No.477 of 2011 seeking perpetual injunction. It is the case of the petitioners during pendency of the suit, the respondents herein have obtained pattadar pass books and title deed books in respect of Survey Nos.149 and 150 of Pakabanda village. Therefore, appointment of an advocate commissioner is inevitable to resolve the lis involved in the suit. It is needless to say unless until a contrary is proved, the Court can place *prima facie* reliance on pattadar passbooks and title deeds issued in favour of an individual by the revenue authorities. Even if the advocate commissioner is appointed, he cannot decide the validity or otherwise of the pattadar pass books and title deed books in question. The only remedy available to the petitioners is to file an appeal before the competent authority for cancellation of pattadar pass books and title deed book. For one reason or other, the petitioners did not choose to follow the procedure contemplated. It is the further case of the petitioners that the respondents are not cooperating with them for conducting survey. Even assuming but not conceding that the respondents herein are not cooperating with the petitioners for conducting survey of the suit schedule property, that itself is not a valid ground for appointment of an advocate commissioner. It is a settled principle of law that the plaintiff has to establish that he was in possession of the suit schedule property as on the date of filing of the suit in order to seek perpetual injunction. In a suit for perpetual injunction, the Court has to consider whether the plaintiff was in possession of the property as on the date of filing of the suit or not. It is needless to say that the Court can incidentally look into the title deed of the parties to the proceedings in order to adjudicate the issue involved in the suit. The contention of the learned counsel for

the petitioners is that the respondents are not in possession of the suit schedule property. Even if an advocate commissioner is appointed, the same may not be helpful to the petitioners to prove that the respondents are not in possession of the property. The trial Court considered the factual aspects of the case in the light of the decisions of this Court in *ARVIND KUMAR AGARWAL v. LEGEND ESTATES (P) LTD., RANGA REDDY DISTRICT, HYDERABAD*¹ and *SARALA JAIN v. SANGU GANGADHAR AND OTHERS*². It is needless to say that an advocate commissioner cannot be appointed for collection of evidence. The various queries raised by the petitioners involve complexity of disputed questions of fact, which can be decided by the trial Court at the time of full fledged trial. The findings recorded by the trial Court are supported by the material available on record. I am in full agreement with the findings recorded by the trial Court. There is no illegality or irregularity which warrants interference of this Court. The petition lacks merits and bonafides and hence the same is liable to be dismissed.

5. Accordingly, the Civil Revision Petition is dismissed. Miscellaneous Petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

17th March 2017.
Fns

¹ 2015(2) ALD 206

² 2016(1) Law Summary 546

