

HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL REVISION PETITION No.5167 OF 2017

ORDER:

The present Civil Revision Petition is filed challenging the order, dated 16.08.2017, passed in I.A. No.407 of 2016 in O.S. No.38 of 2010, on the file of Junior Civil Judge, Tekkali, Srikakulam district.

2. The request made in the said Interlocutory Application, filed under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (for short, 'the C.P.C.'), is to appoint an Advocate Commissioner to localize the petition schedule property, with the assistance of Mandal Surveyor, with Field Measurement Book, and also to note down the physical features of the same.

3. Heard Sri Aravala Rama Rao, learned counsel for the revision petitioner.

4. The said request was resisted to by the respondents/defendants.

5. The learned Junior Civil Judge, having formulated a point in Para No.9, observed that, originally, the Suit was filed in 2010 seeking permanent injunction. Along with the suit, I.A. No.149 of 2010 was filed to grant *ad-interim* injunction. Later, I.A. No.148 of 2012 was filed, under Order VI Rule 17 R/w. 151 and 28 of C.P.C., seeking to delete the reliefs mentioned against clauses 'a', 'b' and 'c', and substitute them with clauses 'i', 'ii' and 'iii' *i.e.*, mandatory injunction and recovery of possession and the same was allowed on 17.10.2016; then, the plaint was amended. The learned Junior Civil Judge also observed that the I.A. from which the order under challenge arises was filed on 15.11.2016, for appointment of an Advocate Commissioner, without pleading anything about any

encroachment, pleading that in case the Advocate Commissioner is appointed to note down the physical features of the schedule property on the ground that the real facts would come out to decide the issues.

6. The learned Junior Civil Judge observing that the revision petitioner has not come to the Court with clean hands and that, at the stage of trial, a vague petition was filed and without conducting trial he cannot seek whether there was any encroachment, and thereby, opined that the said request cannot be acceded to. The other ground is that where the relief is for permanent injunction, request to note down the physical features by appointing an Advocate Commissioner is impermissible. The decisions relied on by the revision petitioner, before the Court in the said I.A., were also referred to, but, however, observed that the proposition of law laid down therein is inapplicable for the fact situation occurring in the Interlocutory Application. Then observing that, 7 years period has elapsed without conducting trial and, the Suit relates to the year 2010, dismissed the Interlocutory Application.

7. Learned counsel for the revision petitioner would submit that after injunction was granted, the respondents have trespassed into the suit schedule property.

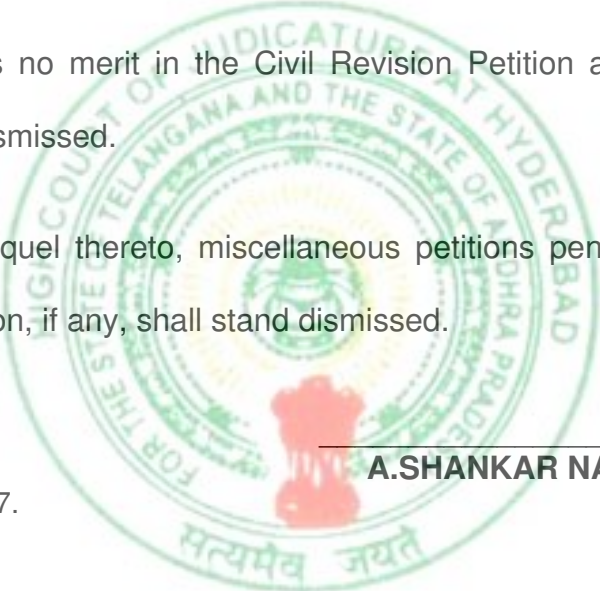
8. A perusal of the affidavit filed in I.A. No.407 of 2016 would not reveal what was the reason, or compelling circumstances, that made the revision petitioner to approach with the request in I.A. No.407 of 2016. What all stated in Para '3' reads thus:

“3. I respectfully submit that in the present circumstances, to come to a just decision, it is highly essential to appoint an advocate – commissioner to localize the petition schedule property with the assistance of mandal surveyor with reference to F.M.B. and also fix stones.”

9. Where the reliefs sought for is for bare perpetual injunction, initially, for mandatory injunction to remove the thatched hut and for recovery of possession of the plaint schedule property by evicting the respondents/defendants, and description of the property in the plaint schedule is clearly delineated within specific boundaries, the question of appointment of an Advocate Commissioner, to take the assistance of Mandal Surveyor for the purpose of localizing the land, and to note down the physical features, is absolutely impermissible. There is no legal infirmity, at all, in the order passed by the Court below, which is under challenge.

10. There is no merit in the Civil Revision Petition and the same is, accordingly, dismissed.

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



A.SHANKAR NARAYANA, J

Date: 15.12.2017.
Dsh