

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3154 of 2017

ORDER:

1) The present Civil Revision Petition is filed by the petitioners/plaintiffs under Article 227 of the Constitution of India, aggrieved by the order, dated 14.06.2016 passed in I.A.No.393 of 2017 in O.S.No.438 of 2010 on the file of the I Additional Junior Civil Judge, Rajamahendravaram, wherein and whereunder an application filed under Order 26 Rule 9 read with Section 151 of C.P.C. seeking appointment of an advocate-commissioner to measure site of 220 square yards excluding the site obtained on exchange from others in the northern side of their property and to measure the total site of respondent as per his title deeds.

2) The facts in issue are as under:

The petitioners/plaintiffs filed O.S.No.438 of 2010 seeking declaration that they have right in the schedule property and for possession of the same. When the suit was posted for arguments, the petitioners/plaintiffs filed I.A.No.393 of 2017 seeking appointment of an advocate-commissioner to measure the site of 220 square yards excluding the site obtained on exchange from others in the northern side of their property and to measure the total site of respondent as per his title deeds.

3) A counter came to be filed by the defendant stating that the matter was posted to 31.03.2017 for arguments and the petition was filed only to drag on the proceedings as well as to cover the lacuna in their case. It is also stated that the defendant filed O.S.No.1204 of 2002 seeking permanent injunction and the same was decreed in favour of the respondent. In the said suit, an advocate-commissioner was appointed and filed his detailed report and the Court gave finding with regard to the schedule properties of the plaintiffs. The plaintiffs did not file any appeal against the decree in O.S.No.1204 of 2002.

4) After considering the rival submissions made, the trial Court dismissed the application. Challenging the same, the present Civil Revision Petition is filed.

5) The learned counsel for the petitioners/plaintiffs would submit that the respondent/defendant has encroached on to the property belonging to the plaintiffs, during pendency of the suit and hence it would be just and necessary to appoint an Advocate Commissioner to measure the land.

6) In spite of service of notice, there is no representation on behalf of the respondent/defendant.

7) It is to be noted that the main suit is posted for arguments. When the suit is posted for arguments of the defendants, the

petitioners/plaintiffs filed the present petition seeking appointment of an advocate-commissioner to measure the land.

8) In *Bandaru Mutyalu and another v. Palli Appalaraju*¹ a learned Single Judge of this Court while dealing with the aspect of appointment of an advocate-commissioner 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."

9) It is to be noted that the suit is filed for declaration of title and consequential injunction. Admittedly the suit is posted for arguments and the petitioners did not take any steps for appointment of an advocate-commissioner at an early stage. For the reasons stated above and in view of the judgment referred to above, I see no reasons to interfere with the order passed by the trial Court.

10) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Dt:22.12.2017
GM

¹ (2013) 6 ALT 26

