

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.1298 OF 2017

ORDER:

This Civil Revision Petition is filed challenging the order dt.04.01.2017 in I.A.No.490 of 2016 in O.S.No.52 of 2015 of the Principal Junior Civil Judge, Bhimavaram.

2. The petitioner herein is the plaintiff in the above suit. She filed the said suit against the respondents for perpetual injunction restraining the respondents from interfering with her peaceful possession and enjoyment of the plaint schedule property and for a direction to the respondents not to evict the petitioner otherwise than due process of law.

3. The basis of the claim of the petitioner is that a Tree Patta has been granted to her father on 26.12.1984 in respect of the subject land, but the respondents are trying to interfere with the enjoyment of her right created under said patta.

4. Petitioner filed I.A.No.490 of 2016 to appoint an Advocate Commissioner to note down the physical features of the plaint schedule property, other extent in survey No.137/1 of Dumpagadapa Revenue Village of Akividu Mandal and also about other occupants in the assigned lands.

5. This application was opposed by the respondents.

6. On 04.01.2017, the said application was dismissed. The Court below held that the petitioner is claiming an authorized

license of the plaint schedule property and there is no necessity to note down the physical features or encroachers of other extents in the survey number. It also stated that there is no dispute regarding identity of physical features of the plaint schedule property.

7. Challenging the same, this Revision is filed.

8. Counsel for the petitioner contended that the trees covered by Tree Patta issued to the petitioner's father have been removed by the respondents and therefore Advocate-Commissioner is required to note down the physical features and in particular the traces of removal of trees.

9. The purpose of filing of the suit by the petitioner is to protect her enjoyment right created under Tree Patta. Thus any removal of trees by the respondents in the subject land would seriously cause prejudice to the right of the petitioner in the suit and to the extent the petitioner sought appointment of Advocate Commissioner to note down the traces of removal of trees, the respondents cannot have any grievance. But, I agree with the contention of the Government Pleader for Arbitration that there is no necessity for the Advocate Commissioner to go into the aspect of determining the extent of land in the survey number or to note down the occupants in the assigned lands, since there is no dispute about the extent of land and whether other occupants are there or not, is irrelevant.

10. So, I am of the opinion that the Court below committed error in declining to appoint Advocate Commissioner to note down the

physical features of land, in particular, whether there are any traces of removal of trees in the subject land.

11. Therefore, this Civil Revision Petition is partly allowed; the order dt.04.01.2017 in I.A.No.490 of 2016 in O.S.No.52 of 2015 of the Principal Junior Civil Judge, Bhimavaram is set aside partly; and the Court below is directed to appoint Advocate Commissioner to note down the physical features, in particular, whether there are any traces of removal of trees in the subject land. There shall be no order as to costs.

12. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

30th March, 2017.
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M.S. RAMACHANDRA RAO, J

