

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.5326 OF 2017

ORDER:

The present Civil Revision Petition is filed under Article 227 of the Constitution of India by the revision petitioner, challenging the order, dated 19.09.2017, in I.A. No.1017 of 2017 in I.A.No.496 of 2017 in O.S. No.66 of 2017 passed by the learned Principal Junior Civil Judge, Srikakulam, Andhra Pradesh State.

2. The revision petitioner herein is defendant No.1 in O.S. No.66 of 2017 on the file of the Principal Junior Civil Judge, Srikakulam, while respondent No.2 is defendant No.2. Respondent No.1 herein, who is plaintiff in the aforesaid suit, filed the suit in O.S. No.66 of 2017 seeking perpetual injunction, restraining the defendants from interfering with his possession and enjoyment over the plaint schedule property. The plaint schedule property consists of Ac.0-13 cents comprised of Survey No.15/17, situated at Vakalavalasa village and panchayat, Srikakulam Mandal and District, within the following boundaries as shown in the plaint schedule:

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- East : Water flowing channel,
South : Wet land of Dumpala Jagannadham and in turn after death of said Jagannadham, his wife and son executed Regd. Settlement deed in favour of the plaintiff for an extent of Ac.0-13 cents.
West : Wet land of Bendi Ramulu,
North : Wet land belongs to the 1st defendant Pedada Appalasuri. ”

The plaintiff has also filed an interlocutory application in I.A. No.496 of 2017 seeking for grant of temporary injunction.

3. Heard Sri Rama Murty P.V.S.A., learned counsel for the revision petitioner. Though, notice was served on respondent No.1, none appears for him. In the cause title, it is shown that respondent No.2 is not a necessary party.

4. The learned counsel would submit that no *ex parte* injunction was granted, and only during the course of inquiry in I.A. No.496 of 2017, when the plaintiff filed I.A.No.1017 of 2017, order under challenge was passed.

5. The relief in I.A. No.1017 of 2017 filed under Order XXVI, Rule 9 of the Code of Civil Procedure, 1908 (for short 'CPC') sought for is, to appoint an advocate commissioner for the purpose of localization of the suit schedule property to measure and to note down the physical features thereof with the assistance of Mandal Surveyor, Srikakulam, with reference to suit documents/sale deeds of both parties.

6. The revision petitioner and respondent No.2 herein appears to have opposed the aforesaid request by filing a detailed counter, strongly averring that it is impermissible for respondent No.1 - plaintiff to invoke the provisions of Order XXVI Rule 9 of CPC, when the suit itself is for perpetual injunction simpliciter.

7. The Court below having formulated the point, went on deliberating on the submissions made and allowed the petition appointing a local member of the Bar Association as Commissioner to localize the suit schedule property, fixing Rs.5,000/- towards her fee tentatively. Of course, liberty was given to the Commissioner to take the assistance of the authorized Surveyor.

8. The moot point that arises for consideration in the present context is, whether in a suit for perpetual injunction simpliciter, a request for localization of the land and to note down the physical features can be acceded to?

9. The very cardinal principle of granting injunction is based on the possession of a party, who seeks perpetual injunction and gets defeated, if such a request is acceded to. It is not a suit where boundary dispute is occurring, nor the relief sought for in the suit is for declaration of title. The order under challenge, therefore, certainly, warrants interference.

10. Hence, the order, dated 19.09.2017, passed in I.A. No.1017 of 2017 in I.A.No.496 of 2017 in O.S. No.66 of 2017 by the Court below is set aside allowing the present Civil Revision Petition at the admission stage itself. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the present revision, stand closed.

A. SHANKAR NARAYANA, J

November 30, 2017.
Mgr

