

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.5836 of 2016

ORDER:

Heard.

2. The present revision is filed under Article 227 of the Constitution of India, aggrieved by the order and decree dated 11.08.2016, passed in C.M.A.No.26 of 2015, wherein the appeal filed by the petitioners against the order dated 19.11.2015 made in I.A.No.834 of 2015 in O.S.No.141 of 2015 on the file of Principal Junior Civil Judge, Puttur, was dismissed.

3. The facts in issue are as under:

The petitioners herein are defendants in O.S.No.141 of 2015 which was filed seeking permanent injunction in respect of property situated in Survey No.183/1 of Eswarapuram Village admeasuring Ac.1.65 cents. Along with the said suit, an Interlocutory Application came to be filed seeking grant of ad-interim injunction. By an order dated 19.11.2015, the Principal Junior Civil Judge, Puttur, allowed the said I.A. Challenging the same, C.M.A.No.26 of 2015 came to be filed before the Court of Senior Civil Judge, Puttur, which was dismissed confirming the findings of the trial Court. Aggrieved thereby, the present revision came to be filed.

4. It is stated that the petitioners and the respondent are claiming possession over the property in dispute. It is to be noted that the trial Court, while deciding interlocutory application, denied certain

documents (Exs.P6 to P8), which show that the plaintiff is in possession of the property.

5. It is submitted by the learned counsel for the petitioners that since the main suit is still pending and since the issue which has to be decided is with regard to possession of the property as on the date of filing of the suit, a direction may be given to dispose of the main suit.

6. A perusal of the report filed by the Advocate Commissioner, which is placed on record would disclose that he has noted down the physical features of plaint schedule property and defendants schedule property. He found one bore well with electric connection vide service No.0147 and a shed in Survey No.181. The underground pipeline was laid from borewell in Survey No.181 to Survey No.183/ 2 and Survey No.183/ 1B. The report indicates young sprouts of paddy in Survey No.183/ 2 and damaged pipe outlet in Survey No.183/ 1B. Further, a channel was found in between Survey No.181 and lands in Survey Nos.183/ 2, 183/ 1B and plaint schedule Survey No.183/ 1. The report refers to one open well with electric pump set with new open channel, one kanuga tree in the middle ridge of land and 7 coconut trees aged nearly 30 years on channel mound on the northern side of land in Survey No.183/ 1. It is stated that he found one stone ridge for channel mound on the northern side of the land in Survey No.181/ 1, various thorny bushes and leaf plants on entire channel mound.

7. Relying upon the report of the advocate commissioner, the learned counsel for the petitioners would submit that the petitioners/ defendants are the owners of the land and that they are in possession of the same.

8. The same is refuted by the learned counsel for the respondent/ plaintiff stating that basing on the registered sale deed viz. Exs.P6 to P8, it is clear that the plaintiff is in possession of the property. But, the learned counsel for the petitioners/ defendants relied upon various registered documents and revenue records viz. adangal/ pahani copy, 1-B Namuna (ROR), Statement of encumbrance on property, etc. which clearly indicate the ownership of the defendants over the property is in dispute.

9. Since the main suit is still pending consideration and having regard to the fact that both the parties are claiming ownership and possession over the property, it would be just and proper if the present Civil Revision Petition is disposed of directing the trial Court to dispose of the O.S.

10. Having regard to the above, the CRP is disposed of directing the trial Court to dispose of O.S.No.141 of 2015 within a period of six months from the date of receipt of a copy of the order. Till such time, *status quo* as on today to be maintained in respect of possession of the property in dispute. No costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

17.02.2016

vhb