

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2440 of 2017

ORDER:

1) Aggrieved by the order dated 25.04.2017, passed in I.A.No.23 of 2017 in O.S.No.96 of 2015 on the file of the VIII Additional District Judge, Chittoor, wherein an application filed under Order XXVI Rules 10-B, 10-C and Section 151 of C.P.C. seeking appointment of an advocate-commissioner, for the purpose of auctioning the mango and coconut crop in the petition schedule properties with the aid of local police and deposit the sale proceeds in the Court, was dismissed, the present Civil Revision Petition is filed by the plaintiffs under Article 227 of the Constitution of India.

2) The petitioners/plaintiffs filed O.S.No.96 of 2015 seeking partition of the suit schedule properties into two equal shares by taking into consideration the good and bad qualities thereof by metes and bounds and to allot one such share to the plaintiff and in default the same through process of law. Pending the suit, the plaintiffs filed I.A.No.23 of 2017 seeking appointment of an advocate-commissioner. It is also stated that in the previous year also the defendant illegally took away a tractor load of mango crop without hearing the advocate-commissioner, who was present there to auction the mangos. It is averred that even this year, the defendant and his followers are again illegally trying to harvest the crop from the suit schedule property and if he

succeeds in harvesting the crop, the petitioners may not get any share in the usufruct from the trees. Hence, prayed to appoint an advocate-commissioner.

3) The defendant filed counter denying the averments made in the affidavit filed in support of the petition. It is stated in the counter that the father of the defendant divided the property long back in the year 1996 and since then the father of the defendant was in exclusive possession and enjoyment of the schedule property. It is stated that since several years the defendant and his father are selling mango crop to the third parties. This season also the defendant spent Rs.5,00,000/- for development of mango garden by applying pests and medicines etc. and the said property is allowed to be auctioned and deposit the sale proceeds in Court, it would be very difficult to him to realize the money which was spent for the development of mango garden.

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

5) Learned counsel for the petitioners would submit that there is an urgency in appointment of advocate-Commissioner as the mango crop is ready for a harvest. He further submits that on previous occasion also the defendant illegally took away a tractor load of mango crop. In this season also the defendant is trying to harvest the crop and if he succeeds, the petitioners would sustain irreparable loss.

6) Learned counsel for the respondent submits that since there is no pleading in the plaint about the mango crop and coconut crop in the plaint schedule property and also with regard to mesne profits, the trial Court was right in rejecting the request of the petitioner.

7) A perusal of the report of the Advocate-Commissioner filed along with the revision, would show existence of fruit bearing mango trees and coconut trees in the suit schedule property. Earlier, the petitioners filed I.A.No.55 of 2016 seeking appointment of an advocate-commissioner for the purpose of auctioning the mango crop and the coconuts, as there was every likelihood of misuse of the same by the defendant. The said petition was allowed and one Sri K.M. Rajachandra Yadav, was appointed as an advocate-commissioner. The commissioner issued a notice and publicity of auction was made in and around the village. As per the notice, the advocate-commissioner went to the suit schedule property on 07.05.2016, where the wife of defendant and E.Hari Babu and others filed objections stating that they will settle the dispute amicably. On 04.07.2016, the counsel for the plaintiffs issued a memo to the Commissioner stating that there was no compromise between the parties and insisted him to execute the warrant. Hence, he issued a notice indicating the date of auction. The defendant refused to receive the notice, as such the notice was affixed to the outer wall of the house of the defendant. After some time, while the Commissioner was in the village, Plaintiff No.2 came and informed him that the defendant,

his wife, E.Hari Babu and K.Gangi Reddy, with the help of labours removed the mango crop. Immediately, he went to the suit schedule property and found entire mango crop being harvested and the same was being loaded into two tractors. When the Commissioner tried to object the same, the defendant pulled him down by force. The Commissioner lodged a report against the said persons, which came to be registered as Crime No.69 of 2016.

8) The main ground on which the trial Court rejected the request was that the plaint is silent as to the existence of mango trees and there is no claim of the petitioners for mesne profits. Though the plaint is silent, but the advocate-commissioner report of the previous year, which has been filed and remained unchallenged, discloses the presence of mango trees and also the crop taken from the said mango trees. It is also to be noted here that in the year 2016 similar such request was made before the trial Court which was allowed directing the advocate-commissioner to conduct auction and deposit the sale proceeds into the Court. The record also discloses that when the Commissioner went to the said place for auction, the defendant high handedly took away the mango crop by pushing the advocate-commissioner down, which lead to registration of Crime No.69 of 2016 against the defendant. That being the position, this Court is of the view that it is a fit case for appointment of an advocate-commissioner to conduct auction of the mango crop and to deposit the sale proceeds in the Court.

9) Accordingly, the Civil Revision Petition is allowed setting aside the order, dated 25.04.2017 passed in I.A.No.23 of 2017 in O.S.No.96 of 2015 on the file of the VIII Additional District Judge, Chittoor, and consequently, I.A.No.23 of 2017 stands allowed to the extent of appointment of Advocate-commissioner to conduct auction of the mango crop and deposit the sale proceeds in the Court. The trial Court is directed to appoint an Advocate-commissioner for the said purpose. There shall be no order as to costs.

10) Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

13.06.2017
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