

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4971 of 2017

ORDER:

The present Civil Revision Petition is filed under Article 227 of the Constitution of India, assailing the order dated 08.06.2016, passed in I.A.No.343 of 2017 in O.S.No.181 of 2012 on the file of the I Additional Junior Civil Judge, Rajamahendravaram, wherein the application filed under Order 26, Rule 9 read with Section 151 C.P.C. seeking to appoint an Advocate Commissioner, to note down the physical features and measure the schedule property with the help of Municipal Surveyor with the title deeds of both the petitioners and respondents and to file report, was rejected.

2. It is to be noted that the plaintiff filed O.S.No.181 of 2012 seeking permanent injunction restraining defendants, their men, agents, persons engaged by them and/or persons claiming through them from interfering with the peaceful possession and enjoyment of the plaint schedule sites. Pending said suit, I.A.No.343 of 2017 came to be filed seeking appointment of an Advocate Commissioner.

3. In the affidavit filed in support of the impugned application, it is contended that the plaintiffs are not the owners of the property and they have no right over the same. It is stated that the documents filed by the plaintiffs do not relate to the schedule property and those documents are fabricated and created for the purpose of filing of the suit. The property admeasuring 600 square yards belongs to 1st and 2nd defendants and

defendant Nos.3 and 4 are not known to them. It is stated that originally 600 square yards of site out of the property was purchased by one Smt.Vantipally Seetha Rama Tulasi Ratnam from Gampa Jagadamba in terms of registered sale deed dated 14.11.1975. Thereafter she sold the said property vide two different sale deeds to plaintiffs and plaintiffs Nos.1 to 5 have become joint owners etc, were all said to be false. It is stated that the plaintiffs under the guise of *ex-parte* injunction orders, are trying to occupy the schedule properties, without having any right or title in order to cause wrongful loss to defendants. The defendants stated that they have documentary evidence, which were also marked as exhibits. It is the contention of the first defendant that the vendor of the plaintiffs are not having any right or title over the schedule property and the alleged sale deeds filed by the plaintiffs are fabricated and created one and not pertaining to the scheduled property. It is also stated in the affidavit that initially the property belonged to one Sri Raja Kanchumarthi Veera Vankata Satyanarayana Subbarao and others, who formed the layout defendant No.2 purchased plot No.2 on 05.01.1962, admeasuring 600 square yards from the said lay-out. Only plot Nos.1 and 2, were sold and registered, whereas, plot Nos.3 to 9 were acquired by Rajahmundry Municipality in 1962 and in 1964. Thereafter, Rajahmundry Municipality formed a fresh layout in the name of Ganesh nagar, T.S.No.935/ part, LP No.31/ 64. The Director of Town and Country Planning, A.P., Hyderabad, approved the layout without observing the already established LP No.63/ 47 of Kanchumarthivari layout. Due to the new layout, the father of the first defendant lost 30' x60' feet for new road. The northern side road with 40' road was also not shown in the new layout, LPT 31/ 64. In its place, a site

with measurement of 250' x 146' was shown. This bit of land consists of (i) old layout 40' feet wide road and (ii) 100 square yards of the father of the first defendant, T.Linga Naidu. To the north of this bit another road with a width of 30' feet was shown in LP No.31/ 64. It is the grievance of the defendants that since the alleged vendors to plaintiffs have no title, mere transaction and creation of a nominal sham documents, does not create any right, title and ownership over the property in favour of plaintiffs. Hence, the first defendant submits that part of the schedule property belongs to him and the remaining part of the schedule property belongs to Rajahmundry Municipal Corporation.

4. A counter came to be filed by the plaintiffs denying all the material averments made in the affidavit contending that defendant No.1 in his cross examination admitted about the description of the schedule property, its physical features and contrary thereto. Accordingly, the plaintiffs sought for dismissal of the I.A.

5. The Court below, considering the rival submissions, dismissed the I.A. Challenging the same, the present revision petition came to be filed.

6. Learned counsel for the petitioner/ defendants 1 and 2, reiterating the stand taken in the I.A. filed before the Court below would submit that it is a fit case to consider the request of the petitioner, for appointment of an advocate commissioner.

7. It is to be noted here that originally the respondents/ plaintiffs filed a suit restraining the interference and peaceful possession by the defendants in respect of plaint schedule property. It is also to be noted

that the evidence of defendant No.1 was closed on 10.03.2017 and the evidence of defendant Nos.2 to 4 was closed on 04.04.2017, as there was no representation and on the same day the impugned application was filed.

8. As per the affidavit in I.A., the contention of defendant No.1 was that part of the schedule property belongs to him and the remaining part of the schedule property belongs to Rajahmundry Municipal Corporation, that due to formation of a new layout, plot No.2 belonging to petitioner's father, was altered into two smaller plots with one plot having an extent of 300 square yards and one plot having 100 square yards plus 30 feet road in between two plots.

9. It is to be noted that the appointment of an Advocate Commissioner is not to note down physical features or measure as to whether the petitioners have been in possession of the schedule property. Further noting down of physical features of suit locality in a suit for injunction does not serve any purpose as it is not even alleged by the defendants that the plaintiffs are changing the physical features of the property. It is well settled law that an Advocate Commissioner cannot be appointed to collect evidence and the party claiming to be in possession of property has to prove the same by acceptable evidence. Further, it is to be noted that the suit is of the year 2012 and after entire trial is over, the application came to be filed seeking appointment of an Advocate Commissioner. Even if the plea of the petitioner is to be accepted, no purpose would be served, as the Court cannot decide at this stage, whether the part of the

scheduled property belongs to defendant No.1 and remaining part to the Rajahmundry Municipal Corporation and it is beyond scope of the suit.

10. In view of the above, it would be difficult for an Advocate Commissioner to conduct survey. Further, it is also submitted that there are latches on the part of the petitioners and things would have been different, if he had taken steps at the earliest point of time.

11. Having regard to the above, I do not see any reason to interfere with the order under challenge.

12. Accordingly, the Civil Revision Petition is dismissed giving liberty to the petitioner to avail the remedies available under law, if any. No costs.

13. As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

24.11.2017
vnb

C. PRAVEEN KUMAR, J