

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 451 of 2017

ORDER:

1) Assailing the order dated 21.12.2016, passed in I.A.No.1036 of 2016 in O.S.No.704 of 2016 on the file of the I Additional Junior Civil Judge, Tirupati, wherein an application filed under Order XXVI Rule 9 and Section 151 of C.P.C. seeking appointment of a Court-Commissioner to note down the physical features of the schedule property with the help of Municipal Surveyor or Mandal Surveyor was allowed, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

2) The petitioner herein is the first defendant, respondent Nos.1 to 4 are the plaintiffs and respondent Nos.5 and 6 are defendant Nos.5 and 6 in the suit. For the sake of convenience, the parties hereinafter be referred to as arrayed in the suit.

3) The facts in issue are as under:

The plaintiffs filed the above suit seeking permanent injunction restraining defendant No.1, his men, agents, servants, nominees or anybody claiming under him from changing the plaint B-Schedule property (road) and thereby annex the same to his property, alleged to have been situated on its western side. Pending the said suit, the present I.A. came to be filed under Order XXVI Rule 9 and Section 151 of C.P.C. seeking appointment of a Court-Commissioner to note down the physical features of the

schedule property with the help of Municipal Surveyor or Mandal Surveyor. In the affidavit filed in support of the said petition it is stated that the first defendant claimed to have purchased the property on the western side of B-Schedule road and wants to raise superstructure in the said property for which he wants to occupy the said road, highhandedly and illegally. The first defendant is said to have paid a sum of Rs.15,000/- towards challan to the second defendant with a request to survey the road. Since the second defendant failed to react, a complaint came to be lodged before the Superintendent of Police, Tirupati, on 27.09.2016 by marking a copy of the same to the municipal authorities. Their inaction lead to filing of W.P.No.33479 of 2016 before this Court. Though the interim orders were passed earlier but however the writ petition was dismissed on 10.11.2016. It is stated that "B" Schedule Road alone is having access to plaint "A" Schedule property and if for any reason it is removed, there is no way to the plaintiff to reach "A" schedule property. After disposal of the writ petition, the first defendant again wants to renew his illegal acts by annexing the plaint "B" schedule property Road by way of removing the road and raising structures by encroaching on to the lands of the plaintiff. Since the first defendant is trying to change the physical features of the schedule property and to show the actual physical features existing as on the date of filing of the suit, the plaintiff filed an application to appoint an advocate-commissioner.

4) A counter came to be filed disputing the averments made in the affidavit filed in support of the I.A.

5) After considering the rival submissions made, the trial Court allowed the said application. Challenging the same, the present Civil Revision Petition is filed.

6) Reiterating the contents of the affidavit and also the counter filed, the learned counsel for the petitioner pleads that appointment of an advocate-commissioner is un-just and un-warranted. The learned counsel for the respondents would submit that no prejudice would be caused if an advocate-commissioner is appointed. It is urged that since the dispute is with regard to existence of a road between two lands, it would be just and proper if an advocate-commissioner is appointed to note down the physical features.

7) One of the main grounds which is urged before this Court is with regard to the observations made by the trial Court, wherein the trial Court recorded the concession made by both the counsel for appointment of an advocate-commissioner. Hence, a report was called from the said Court wherein it was mentioned that the advocate-commissioner came to be appointed only on a concession made by the learned counsel appearing for both the parties. Now an affidavit of the counsel is filed disputing the same.

8) Be that as it may, the issue in the present case is with regard to the existence of a road on western side of "B" schedule property. The plaintiffs claimed that there exists a road adjacent to their land which is the only way for ingress or egress to their plot. The case of the first defendant is that there is no road in existence and that the land of the first defendant is immediately next to the land of the plaintiffs on western side.

9) It is the case of the first defendant that basing on the earlier survey conducted by the town plan surveyor permission was granted for raising of a structure and as such appointment of an advocate-commissioner to note down the physical features is not necessary. As stated earlier, the dispute is with regard to very existence of a road. The plaintiffs plead that there exists a road on the western side of the "A" schedule property whereas the first defendant denies the existence of a road. Since any amount of evidence will not help the Court to find out the ground situation, in a matter like this, appointment of an advocate-commissioner would be just and proper. Therefore, the trial Court has rightly exercised its discretion in appointing an advocate-commissioner to note down the physical features. It cannot be said that appointment of an advocate-commissioner, in a case like this, would amount to gathering evidence. Hence, this Court finds that there are no merits in the revision.

10) Accordingly, the Civil Revision Petition is dismissed, giving liberty to the first defendant/petitioner to submit the objections,

if any, to the report filed by the advocate-commissioner. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

19.04.2017
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