

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.30750 OF 2016 AND C.R.P. No.623 OF 2017

COMMON ORDER:

Heard Mr.Alladi Ravinder and Mr.Seshu Kumar for petitioners and the Assistant Government Pleader for Home.

The petitioners in W.P. No.30750 of 2016 and the petitioners in C.R.P. No.623 of 2017 are parties in O.S. No.467 of 2015 as plaintiffs and defendants respectively. For convenience, the parties are referred as 'plaintiffs' and 'defendants'.

O.S. No.467 of 2015 was filed by Thanda Ramesh and three others for the relief of perpetual injunction restraining the defendants and their men, agents etc. from interfering with plaintiffs' possession and enjoyment of the plaint schedule property in an extent of Acs.18-34gts. The plaintiffs filed I.A. No.663 of 2015 for ad-interim injunction and temporary injunction pending suit. On 04.09.2015 ad-interim injunction was granted for a limited period and thereafter extended from time to time. The defendants in the month of January, 2016 claim to have filed counter affidavit and the counsel appearing for the parties, on instructions, state that I.A. No.663 of 2015 is pending and orders on merits are yet to be passed by the trial Court. The plaintiffs on 26.08.2016 requested respondent Nos.2 to 4 to provide police protection on the strength of ad-interim injunction dated 04.09.2015. The cause of action for filing the writ petition is that respondent Nos. 2 to 4 have completely ignored the

request and not provided police protection to plaintiffs. Hence, the writ petition.

While matters stood thus, plaintiffs filed I.A. No.1028 of 2016 for appointment of Advocate Commissioner and the application was resisted by defendants, the trial Court through order dated 23.12.2016 allowed I.A. No.1028 of 2016 and appointed one G.Venkata Ramana as Advocate Commissioner to demarcate the suit schedule property with the help of Government Surveyor. The defendants aggrieved by the order dated 23.12.2016, filed C.R.P. No.623 of 2017. During the pendency of C.R.P., the defendants filed memo dated 11.07.2017 and the operative portion reads thus:

“Hence it is prayed that the Hon’ble Court may be pleased to recall the warrant issued to Sri G.Venkata Ramana, Advocate Commissioner and appoint any other advocate for the said suit schedule property.”

The principal objection of defendants against the appointment of Advocate Commissioner is that the appointment of Commissioner is nothing but a step undertaken by plaintiffs to gather evidence and in a suit for perpetual injunction the appointment of Advocate Commissioner for the said purpose is illegal and unsustainable.

This Court having regard to the order proposing to pass in these two matters to which the learned counsel have consented, the other aspects of the matter are not adverted to.

Reverting to plaintiffs’ grievance against not providing police protection, this Court is of the view that the cause of action

complained against police at this stage need not be examined, for by filing a petition for appointment of Advocate Commissioner a few of the aspects on the identity, survey etc. are required to be considered in I.A. No.663 of 2015. At this stage, issuing direction to police in the considered view of this Court ought not to be entertained. The circumstances would have been certainly different if I.A. No.663 of 2015 is ordered, temporary injunction granted. Therefore, to meet the ends of justice and to the extent necessary, this Court is of the view that the interference of police ought to be avoided while a substantial issue is pending before the civil Court. Likewise, the defendants by filing memo dated 11.07.2017 have substantially changed their opposition against appointment of Advocate Commissioner, but restricted it to continuation of Mr.G.Venkata Ramana as Advocate Commissioner. Having regard to the above circumstances and to meet the ends of justice, I am satisfied that the writ petition and the civil revision petition can be disposed of by this order:

The learned I Additional Senior Civil Judge, Warangal, is directed to hear and dispose of I.A. No.663 of 2015 within two weeks from the date of receipt of a copy of this order. The parties are given liberty to represent by filing a Memo before the trial Court for expeditious disposal as directed by this order. The order impugned in the C.R.P No.623 of 2017 is set aside and I.A. No. 1028 of 2016 is restored to file for consideration and disposal in accordance with law. The trial Court is also given liberty to take note of the stand taken in the Memo dated 11.07.2017.

No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S.V.BHATT, J

Date: 13.10.2017

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