

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2869 of 2017

ORDER:

1) Assailing the order, dated 05.07.2016, passed in I.A.No.61 of 2014 in O.S.No.130 of 2014 on the file of the Senior Civil Judge, Palamaner, wherein an application filed under Order XXVI Rule 9 of C.P.C. to appoint an advocate-commissioner to measure the plaint schedule property and to note down the existing physical features with the assistance of Mandal Surveyor, was allowed, the present Civil Revision Petition is filed by defendant Nos.1 and 2 under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The first respondent herein filed O.S.No.130 of 2014 seeking declaration of his title and consequential injunction restraining the defendants, their men, agents, followers etc. from trespassing into or in any way interfering with the plaintiff's possession and enjoyment over the schedule property. As the petitioners herein were making attempts to change the existing physical features of the disputed property, as well as trying to change the boundaries and also making efforts to close the well situated on western side of disputed property in order to change its identification, the plaintiff filed an application seeking appointment of an advocate-commissioner to note down the physical features. Respondent No.1 filed counter, which was adopted by defendant No.2 stating

that he purchased land admeasuring Ac.1.44 cents out of Ac.3.44 cents in Sy.No.105, Kuppam Revenue Village from respondent No.3 vide agreement dated 12.09.2007 and the possession of the said land was already delivered to him. It was further pleaded that only with a view to collect evidence and to protract the matter, the plaintiff filed the present application seeking appointment of an advocate-commissioner.

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

4) Learned counsel for the petitioners would submit that the suit is posted for trial and the present petition is filed only for collection of evidence and that appointment of an advocate-commissioner is not necessary. Since the respondent No.3 from whom respondent No.1 has purchased the property is in possession of the schedule property, the question of changing the physical features would not arise.

5) Learned counsel for the first respondent/plaintiff would submit that the trial Court rightly allowed the petition as the defendants were making attempts to change the physical features of the schedule property. He further submits no prejudice would be caused to the defendants if an advocate-commissioner is appointed.

6) In *Bandaru Mutyalu and another v. Palli Appalaraju*¹ a learned Single Judge of this Court while dealing with the aspect of appointment of an advocate-commissioner before trial held as under:

“Where there is controversy as to identification, location or measurement of the land, local investigation should be done at an early stage so that the parties are aware of the report of the Commissioner and go to trial prepared. The party against whom the report may have gone may choose to adduce evidence in rebuttal.”

7) It is to be noted that the suit is filed for declaration of title and consequential injunction. The plaintiff contends that he is in possession of the plaint schedule property whereas the respondents would contend that respondent No.1 is in possession of the property, as he purchased the property from respondent No.3.

8) In *Haryana Wakf Board v. Shanti Sarup and others*² the Apex Court held that in a case where demarcation of the disputed land is warranted, it would be appropriate for the Court to direct investigation by appointing a local investigator under Order XXVI Rule 9 of C.P.C.

9) In *Pilli Yadaiah and others v. Pilli Komraiah and others*³ another learned Single Judge of this Court while dealing with the application for appointment of commissioner held as under:

¹ (2013) 6 ALT 26

² (2008) 8 SCC 671

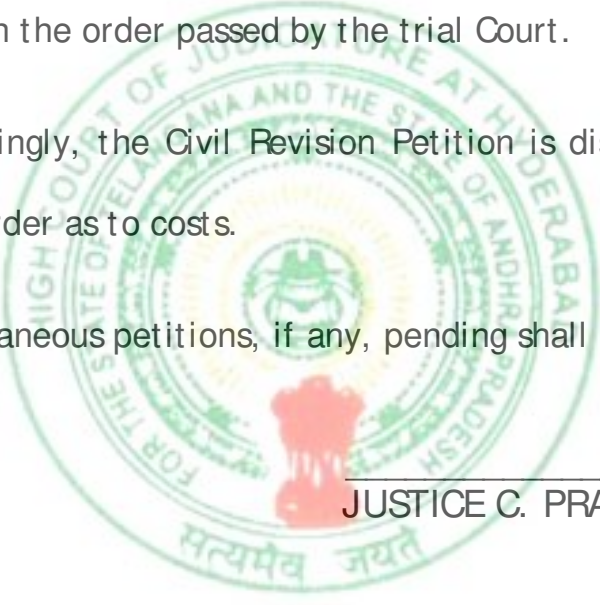
³ (2013) 6 ALT 158

“The appointment of Advocate-Commissioner to note the physical features in view of the contradictory stands taken by the parties is essential to avoid voluminous oral evidence.”

10) Having regard to the judgments referred to above and taking into consideration the facts in issue, appointment of advocate-commissioner to note down the physical features of schedule property with the assistant of Mandal Surveyor may not amount to collecting evidence but on the otherhand it would help to avoid voluminous oral evidence. Hence, I see no grounds to interfere with the order passed by the trial Court.

11) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

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



JUSTICE C. PRAVEEN KUMAR

10.11.2017
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