

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5537 of 2016

ORDER:

1) The present Civil Revision Petition is filed by the petitioner/ plaintiff under Article 227 of the Constitution of India, aggrieved by the order, dated 03.11.2016 passed in I.A.No.376 of 2016 in O.S.No.54 of 2016 on the file of the Junior Civil Judge, Sathyavedu, wherein and whereunder an application filed under Order 26 Rule 9 and Section 151 of C.P.C. seeking appointment of an advocate-commissioner to note down the physical features existing in the suit schedule property including the machineries, shed, water tap, electricity service connection to the Cement Brick Unit and to note down other features, was dismissed.

2) The facts in issue are as under:

The petitioner/ plaintiff filed O.S.No.54 of 2016 seeking permanent injunction against the second defendant, his men, agents, servants or anybody on his behalf from interfering with his peaceful constructive possession and enjoyment of the suit schedule property. Pending the suit the petitioner filed an application to appoint an advocate-commissioner to note down the physical features existing in the suit schedule property since the second defendant was intending to change the physical features of suit land.

3) A counter came to be filed by the second defendant stating that with an intention to create documents and to get an order from the Court, the petitioner filed the present petition. It is also stated that there is no need to note down the physical features when suit is filed for permanent injunction. It is also stated that in a suit for permanent injunction, a duty cast upon the party, who approached the Court, to establish his possession over the property by way of documentary evidence and cannot seek the assistance of advocate-commissioner.

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

5) Relying upon the judgment of this Court in *Bandaru Mutyalu and another v. Palli Appalaraju*¹, learned counsel for the petitioner would submit that where there is controversy as to identification of the property, local investigation shall be done before commencement of trial.

6) Learned counsel for the respondents would submit that the petition filed for granting ad-interim temporary is not heard till date and a petition filed by the petitioner not to meddle with the property is also pending. It is urged that only to collect the evidence through an advocate-commissioner and to get an injunction order, the present petition came to be filed.

¹ (2013) 6 ALT 26

7) As seen from the record, the suit is filed for permanent injunction. Admittedly there is no dispute with regard to identity of the property. In *K.Sambasiva Reddy v. Chilla Rama Rao Reddy and others*² a learned Single Judge of this Court held as under:

“Under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, the main purpose of appointing an Advocate Commissioner is to elucidate any matter in dispute. It does not appear from the pleadings of the parties that the identity of the property is in dispute and therefore the question of localizing the property does not arise. It is therefore wholly unnecessary for the petitioner to seek appointment of an Advocate Commissioner. Being the plaintiff, the burden is on him to prove his case by producing required evidence and he cannot seek to rely upon the help of an Advocate Commissioner for this purpose. Unless he has material in his possession to show that he has title over the suit schedule property, he should not have filed the suit at all. If, for any reason, the petitioner wants to establish the identity of the property with reference to the boundaries mentioned in the documents on ground, he is always entitled to seek survey of the property by approaching the survey officials on his own, and produce the survey reports and examine the surveyor concerned as his witness. Instead of following this procedure, the petitioner appeared to have devised a shortcut method of filing the application for appointment of an Advocate Commissioner. This, in my opinion, surely is not the purpose for which the Advocate Commissioner is appointed.”

8) Since the petition filed seeking ad-interim injunction is still pending; as there is no dispute with regard to identity of the

² (2016) 6 ALD 61

property; and in view of the judgment referred to above, I see no reasons to interfere with the order passed by the trial Court.

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

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

JUSTICE C. PRAVEEN KUMAR

03.02.2017
gkv

