

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.528 of 2017

ORDER:

This Civil Revision Petition under Section 227 of the Constitution of India is filed challenging the Order dt.28.12.2016 in I.A.No.892 of 2016 in O.S.No.204 of 2007 passed by Principal Junior Civil Judge, Sangareddy, whereby the Court appointed an Advocate Commissioner to note down the physical features of the suit property to an extent of Ac.0.36 guntas in S.No.886 with the assistance of surveyor and to identify the suit property with reference to the boundaries mentioned in the schedule annexed to the plaint.

The petitioners herein and the respondents filed different suits in O.S.No.204 of 2007 and O.S.No.113 of 2007, which are pending before Pri. Junior Civil Judge, Medak District at Sangareddy, claiming perpetual injunction against one another for different schedule property. The schedule property in O.S.No.204 of 2007 is Ac.0.36 cents in S.No.886, whereas in O.S.No.113 of 2007 is 986 sq.yards in S.No.886. But the dispute is with regard to identity of the property on ground, in view of the acquisition of the part of the land in road widening scheme.

Both the suits were filed only for injunction simplicitor and both the parties denied the title of the other party in both the suits by filing their Written Statement claiming right and possession by each of the plaintiffs over the subject property, which is referred in the schedule.

On contest, both the parties adduced evidence in support of their contentions. However, after closure of evidence, the present petition was filed before Principal Junior Civil Judge, Sangareddy, by defendant Nos. 1 to 5 in O.S.No.204 of 2007 to appoint an Advocate Commissioner to note down the physical features of Ac.0.36 guantas in S.No.886 and the petition was allowed, as stated supra.

Both the suits were clubbed and the evidence is being recorded in O.S.No.204 of 2007 since both the suits were filed for the same relief.

The order passed by the Principal Junior Civil Judge, Sangareddy, under Order 26 Rule 9 CPC, is now under challenge before this Court mainly on the ground that the Court ought not to have appointed an Advocate Commissioner in a suit for injunction simplicitor and the purpose of appointment of an Advocate Commissioner is only to collect the evidence and therefore, the Order suffers from legal infirmity, which warrants interference of this

Court by exercising power under Article 227 of the Constitution of India.

Heard both the counsel.

During the course of hearing, Sri P. Venkat Reddy, learned counsel for the petitioners, reiterated the contentions urged in the grounds of revision. He relied upon a judgment reported in *Mendu Sathi Reddy and others vs. Mendu Madhusudan Reddy*¹, which was cited before the trial Court. Whereas, Sri M.V. Subba Reddy, learned counsel for R.1 would contend that when the facts are not clear, the appointment of Advocate Commissioner would be helpful to the Court to decide the real controversy between the parties and no legal infirmity is found warranting interference of this Court. In support of his contentions, he relied upon the following judgments: (1) Mohammed Jaffer Abdul Qadeer Qureshi v. Aziz-ur-Rehman Qureshi and others², (2) Shaik Zareena Kasam v. Patan Sadab Khan and others³, (3) Smt A. Laxamma and another v. Smt A. Venkatamma and another⁴ and Bandi Samuel and another v. Medida Nageswara Rao⁵,

¹ 2015 Law Suit (HYD)774

² 2016(3) ALT 477

³ 2011 (4) ALD 231

⁴ 2016(6) ALT 795 (DB)

⁵ 2017(1) ALT 493

wherein this Court held that the Court can appoint an Advocate Commissioner in a suit for injunction simplicitor. Therefore, taking advantage of the law declared by this Court, referred supra, the counsel for respondents contended that the Order under challenge does not call for interference of this Court while exercising power under Article 227 of the Constitution of India and prayed for dismissal of the petition.

The jurisdiction of this Court under Article 227 of the Constitution of India is limited and it is supervisory in nature, hence, this Court cannot set aside the order passed by the Tribunal or Subordinate Courts unless exercised power beyond its jurisdiction or crossing its boundaries. It means that the duty of this Court is to see that Subordinate courts and the trial Courts shall not cross their limits while exercising jurisdiction conferred on those Courts.

Keeping in view the scope of Article 227 of the Constitution of India, I would like to advert to the various contentions of both the counsel. Admittedly, these two suites were filed for injunction simplicitor and the scope of trial in a suit for injunction simplicitor is limited and the Court is required to record its findings whether the plaintiffs, in either of the suits, are in lawful possession and enjoyment of the property as on the date of filing the suit

and if so, whether the defendants committed any act to infringe or invade the legal right of the plaintiffs. If the court records a finding that the plaintiffs are in possession and enjoyment and the defendants made an attempt to infringe or invade the legal right of the plaintiff, the Court can grant a preventive relief to protect the rights of the petitioners, who are in lawful possession of the property. Therefore, in both the suits, the trial Court is required to record a finding as to the lawful possession and enjoyment of the property and any attempt to infringe or invade the legal rights of the parties, in view of the peculiar pleas raised by both the parties in both the suits regarding the existence of Ac.0.36 cents in S.No.886, the trial Court appears to have ordered appointment of an Advocate Commissioner. But, before passing such an Order, the Court has to consider the specific relief claimed in the plaint, the pleas raised in the Written Statement, the issues framed based on the pleading of both the parties and the scope of the suit.

In the present case, the Advocate Commissioner was appointed to note down the physical features of the property. But, in a suit for bare injunction, hardly the physical features are relevant to establish as to who is in possession and enjoyment and who raised constructions, if any, in existence and such act would amount to collection

of evidence. No doubt, the learned counsel for respondents would draw the attention of this Court to various judgments, referred supra, wherein this Court consistently held that the Advocate Commissioner can be appointed in a suit for bare injunction. But, there are different sets of judgments, which says that an Advocate Commissioner can not be appointed in a suit for bare injunction since such appointment would amount to collection of evidence.

In *Yenugonda Bal Reddy v. Manemma and others*⁶, *Sagi Vijaya Ramachandra Raju and others v. Koppiseti Satynarayana and others*⁷ *Koduru Sesha Reddy v. Gottigundala Venkata Rami Reddy and others*⁸ and *Batchu Narayana Rao v Batchu Venkata Narasimha Rao*⁹, this Court held that the Advocate Commissioner cannot be appointed in a suit for bare injunction as it amounts to collection of evidence. Therefore, this Court in *Sarala Jain and others v. Sangu Gangadhar and others*¹⁰ held that to consider the appointment of advocate commissioner under Order 26 Rule 9 CPC, the Court has to take into consideration the

⁶ 2011(3) ALT 232,

⁷ 2009(6) ALT 353

⁸ 2006 (1) ALD 372

⁹ 2010(5) ALD 83

¹⁰ 2016(3) 132

total pleadings of both parties, relief claimed in the suit and the grant of relief for appointment of Advocate Commissioner shall not amount to grant pre-trial decree and necessity to appoint an Advocate Commissioner to decide the real controversy between the parties.

But, in the present case, the trial Court did not refer the pleadings and the purpose for which Commissioner appointment is sought for and the scope of trial in both the suits for injunction simplicitor and the specific pleas raised in both the suits. Moreover, the petitioners sought for appointment of an Advocate Commissioner to note down the physical features of the land in S.No.886 of Pattancheruvu of Medak District, but entire land in S.No.886 is the subject matter of the suit. However, the Court appointed an Advocate Commissioner only to note down the physical features of the land, which is the subject matter in O.S.No.204 of 2007 without considering the scope of the trial in a suit for injunction simplicitor, the issues framed by the trial court and the finding required to be recorded thereon. However, this Court can exercise the power while dealing with the matter under Article 227 of the Constitution of India. But, such power can be exercised only when entire material is placed before this Court and the issues framed are not placed before this to decide the scope of trial and the findings required to be recorded by

the trial Court in the main suit. Hence, I find that the Order of the trial Court is not upon consideration of the entire pleadings and the relief sought for in both the suits and the scope of the trial in both the suits. Hence, I deem it appropriate to remand the matter to the trial Court to decide the matter afresh, after giving reasonable opportunity to both the parties, keeping in view the scope of the trial in both the suits and the issues framed by the trial Court within the limited scope of trial in a suit for injunction simplicitor, and decide the matter in accordance with law.

With the above direction, this Civil Revision Petition is disposed of.

As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 16-03-2017.

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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