

HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CIVIL REVISION PETITION No.222 OF 2013

ORDER:

Heard the learned counsel for the petitioner and respondents.

The short and simple question that arise for consideration in this case is whether the advocate commissioner can be appointed for the purposes sought for by the petitioner in I.A.No.946 of 2012 in O.S.No.91 of 2012 on the file of Principal Junior Civil Judge, Peddapuram.

The suit is for simple injunction. The plaintiff has filed the plaint schedule which is appended to the plaint. In the written statement, lot of questions are raised about the right of defendants, gift deed etc., and these were also urged during the hearing but these are all the matters which have to be adjudicated in the suit.

The application for appointment of commissioner has been allowed in part by the lower court holding that commissioner can be appointed for the purpose of inspection of the suit locality to observe the physical features of the entire property, to note down the manner of its appearance including any construction etc. Rest of the relief is rejected.

The grievance of the counsel for the petitioner in C.R.P. as can be seen from the arguments and the grounds of appeal to is that the court should have directed the advocate commissioner to verify the location of the property with regard to survey number etc., by taking the revenue records, panchayat records into consideration. The same

is opposed by the learned counsel for the respondents stating that going into such details in a suit for injunction is beyond the scope of enquiry.

Learned counsel for the petitioner also relied upon the judgment reported in *BADANA MUTYALU AND ANTOHER v. PALLI APPALARAJU* (¹). A reading of this judgment would make it clear that the learned Single Judge held that “the appointment of commissioner for the purpose of recording/noting the physical features of the property etc., which are from the very nature are available only at the site or on the spot is permissible.” The learned single Judge also held that “in a situation where there is a controversy as to the identification, location or measurement of the land, local inspection should be ordered.” Therefore, it is clear that where there are features peculiar to the very site which need to be established or some observations are to be made of features which are available only at the site or on the ground, then a local inspection can be ordered. However, as rightly observed by the lower court in the impugned order assigning the work of identifying the survey number in which the property is situated, with the aid of panchayat/revenue records etc., would amount to gathering of evidence.

For all of the above reasons, I hold that the order of the lower court is valid and I find no reasons to interfere with the same.

¹ 2013 (5) ALD 376

In the result, this Civil Revision Petition is dismissed and lower court is directed to proceed with the trial of the suit and dispose of the same as early as possible. No costs.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE D.V.S.S.SOMAYAJULU

Dated 6-10-2017.

Dvs



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