

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.6310 of 2016

ORDER:

Heard.

2. The present civil revision petition is filed against the order dated 23.11.2016 passed in I.A.No.224 of 2016 in O.S.No.444 of 2013 on the file of Principal Junior Civil Judge, Chittoor, wherein an advocate commissioner was appointed for the purpose of noting down physical features of petition schedule property and the remaining extent of petition schedule land which was purchased by the defendant and also to note down the underground pipe lines, irrigation sources, existence of mango garden etc., in the said lands, on the ground that the plaintiff is trying to change the physical features of the said lands, trying to cut mango trees and also trying to damage the drip irrigation pipes, etc.

3. The facts in issue are as under:

A suit for injunction came to be filed vide O.S.No.444 of 2013, restraining the defendants from entering into the property in dispute. After filing of the chief affidavit of P.W.1 and while the suit was posted for cross examination of P.W.1, I.A.No.224 of 2016 came to be filed by the defendants seeking appointment of an advocate commissioner. After perusing the material on record, the trial Court allowed the I.A. by appointing the advocate commissioner and adjourned the matter to 23.12.2016. Challenging the order passed in the said I.A., the present Civil Revision Petition came to be filed.

4. The main ground urged by the learned counsel for the petitioner/plaintiff is that the trial Court erred in appointing the advocate commissioner, since it amounts to virtually collecting the evidence as to who is in possession of the property. He submits that plaintiff himself has planted mango trees in the said land and when the plaint itself indicates existence of mango trees, there is no point in appointing an advocate commissioner. On the other hand, the respondents raised objection as to maintainability of revision. He referred to various judgments of this Court viz. **Bandaru Mutyalu and another Vs. Palli Appalaraju**¹ and **Pilli Yadaiah and others Vs. Pilli Komraiah and others**² and the judgment of the Apex Court in **Haryana Wakf Board Vs. Shanti Sarup and others**³, which dealt with the circumstances as to when an advocate commissioner has to be appointed. Further, in **Bandi Samuel and another Vs. Medida Nageswara Rao**⁴, while dealing with an issue, as to the circumstances in which an advocate commissioner has to be appointed, held that appointment of an advocate commissioner can be done even in a suit for injunction.

5. Learned counsel for the respondents further stated that there is every likelihood of petitioner damaging the mango trees so as to claim his right over the property. It has been specifically averred in the I.A. and also observed by the trial Court that apprehension of defendants is that there is every likelihood of plaintiff removing the mango trees.

¹ (2013) 6 ALT 26

² (2013) 6 ALT 158

³ (2008) 8 SCC 671

⁴ 2017 (1) ALT 493

6. It is to be noted that when the apprehension of the defendants has already been recorded in the plaint, the question of plaintiff cutting the mango trees would not arise.

7. Having regard to the facts and circumstances of the case and since an advocate commissioner can be appointed even when there is apprehension that the physical features are likely to be changed or possibility of causing destruction to the property, this Court is of the opinion that the order appointing an advocate commissioner cannot be interfered. For the reasons stated above, the advocate commissioner, with the help of surveyor, shall note down physical features of the property in dispute and as to the existence of mango trees in the plaint schedule property. Further, the original suit shall be disposed of as early as possible, preferably within a period of six to eight months from the date of receipt of a copy of the order.

8. Accordingly, the C.R.P. is disposed of. No costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

17.03.2017

vhb