

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 6955 of 2017

ORDER:

Assailing the order dated 14.09.2017, passed in I.A.No.958 of 2017 in O.S.No.15 of 2010, by Junior Civil Judge, Razole, wherein, the application filed by the petitioner, for appointment of an Advocate Commissioner to localize the plaint schedule property was rejected, the present revision came to be filed.

The petitioner/ plaintiff filed O.S.No.15 of 2010 to declare the title of the plaint schedule property/ 'A' marked portion and recovery of possession of the same after ejecting the defendants there from and to grant mandatory injunction for removal of the structures in 'A' marked portion of the plaint plan. The said suit was filed in the year 2010. Immediately thereafter, a written statement came to be filed disputing the averments made in the plaint schedule property. Pending the said suit, I.A.No.958 of 2017 came to be filed for appointment of an Advocate Commissioner. In the said I.A., it was stated that the defendants have high handedly occupied the 'A' marked portion of the plaint plan and made constructions therein. It was further stated that the defendants made constructions in 'B' marked portion of the plaint plan by removing coconut trees situated in 'A' marked portion of the plaint plan and made it a contiguous (adjacent) plot. Hence, pleaded that it is just and necessary to appoint an Advocate Commissioner to localize 'A' marked portion of the plaint schedule with reference to the revenue records and documents. It

was further stated that unless 'A' marked portion is localized, it would be difficult to remove the constructions made in the plaint schedule property. After considering the rival submissions made, the trial Court rejected the request of the plaintiff. Hence the present revision came to be filed.

Relying upon the written statement filed in the year, 2010, the learned counsel for the petitioner, would submit that the appointment of an Advocate Commissioner is very much essential to localize 'A' property. He pleads that the petitioner is residing in Hyderabad and the property is situated at Razole, East Godavari District, hence could not make the application at the earliest point of time. Since the said property is an ancestral property, he wants to retain 'A' marked portion of the plaint plan.

A perusal of the averments in the plaint would show that the relief sought for by the petitioner was for removal of structures in 'A' marked portion of the plaint and to grant mandatory injunction for removal of the structures of 'A' marked portion of the plaint. From the above, it is clear that in the year 2010 itself, constructions were raised and a written statement has been filed disputing the claim made therein. If really the appointment of an Advocate Commission was very much essential, nothing prevented the plaintiff from filing an application for appointment of an Advocate Commissioner, at that point of time. Now, when the entire evidence is recorded and when the suit is posted for arguments, the present application came to be filed seeking appointment of an Advocate Commissioner.

It is to be noted that in *Bandaru Mutyalu and another v. Palli Appalaraju*¹, 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.”

Further, in *Laxmipriya Exports (India) Private Limited and others Vs. Malingam Mills Limited and another*², this Court held that petitions for reopening the suit, receiving documents and recalling a witness should not be entertained, when the cases are posted for arguments.

Admittedly, the suit is posted for arguments and the petitioner did not take any steps for appointment of an advocate-commissioner at the earlier stage. The present application came to be filed only with a view to drag on the matter. Even otherwise, it is to be noted that the dispute on hand can be decided basing on the material and documents available with the party.

In view of the above circumstances; having regard to the conduct of the petitioner in filing the application, after the case is posted for arguments and in view of the judgments referred to above, I see no reasons to interfere with the order passed by the trial Court.

Accordingly, the Civil Revision Petition is dismissed. No costs.

¹ (2013) 6 ALT 26

² 2016 (2) ALT 537

As a sequel thereto, Miscellaneous Petitions pending if any in this Civil Revision Petition, shall stand closed.

15.12.2017
vhb

C. PRAVEEN KUMAR, J

