

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No. 7387 of 2017

ORDER:

This civil revision petition is filed assailing the order dated 14.12.2017 passed in I.A.No.179 of 2017 in I.A.No.160 of 2017 in O.S.No.39 of 2017 by the Junior Civil Judge, at Luxettipet, Adilabad District. The revision petitioner is the defendant, and the respondent is the plaintiff in the suit O.S.No.39 of 2017 filed before the trial Court. For the sake of convenience, the parties will be referred to as they were arrayed before the trial Court.

2. The plaintiff filed the suit O.S.No.39 of 2017 for perpetual injunction, to restrain the defendant from interfering with his peaceful possession and enjoyment of the plaint schedule property. It is the case of the plaintiff that he is the owner of Ac.1-29 guntas of land in Survey No.175 of Medarpeta village, Dandepalli Mandal in Adilabad District, and he sold his land to one Someshwar Reddy and Rajeshwar Reddy by executing a registered sale deed No.242/73 dated 21.06.1973, and since then the land underwent several alienations, and about 25 persons have constructed houses on the land, and he has been in possession and enjoyment of land admeasuring Ac.0-14 cents in Survey No.175/7-1 out of the total extent of Ac.1-29 guntas. On 06.10.2017, the defendant trespassed into his land, he filed a

complaint in the P.S., Dandepalli, and it was registered as Crime No.152 of 2017 for the offence under Sections 447, 427 r/w 34 IPC. Apprehending dispossession from the suit land by the defendant, the plaintiff filed O.S.No.39 of 2017 against the defendant seeking permanent injunction. In the said suit, the plaintiff filed I.A.No.160 of 2017 seeking ex parte temporary injunction against the defendant.

3. On the contrary, it is the case of the defendant that he is the owner of the suit land, and that the plaintiff has tampered with the revenue records by changing the Survey No.175/9 to 175/7-1. It is his case that the plaintiff filed a false complaint of trespass against him in Crime No.152 of 2017 of P.S. Dandepalli. It is his further case that the temporary injunction granted earlier in favour of the plaintiff was subsequently made absolute and the plaintiff started making illegal constructions on the land. And, therefore, the defendant filed I.A.No.179 of 2017 seeking to appoint an Advocate Commissioner to locate the correct survey number and to note down the correct physical features of the suit land. The trial Court dismissed the petition observing that an Advocate Commissioner cannot be appointed for collection of the evidence. Aggrieved by the dismissal of his petition for appointing an Advocate Commissioner, the defendant has preferred the present civil revision petition.

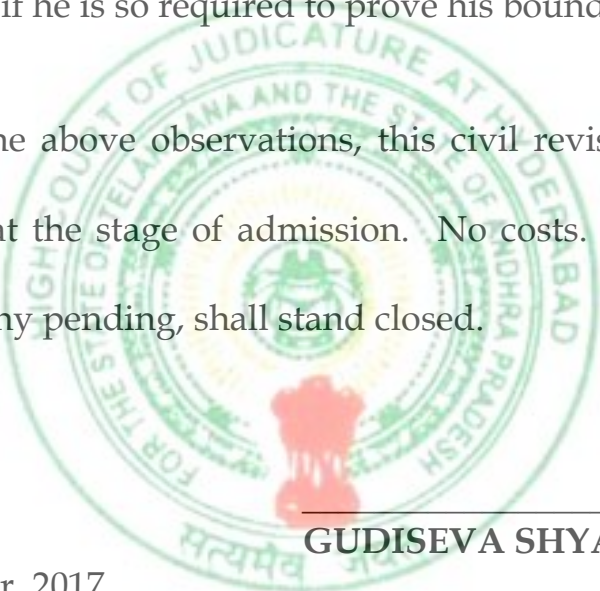
4. Heard the learned counsel for the revision petitioner.
5. The point for consideration in this matter is whether the petitioner is entitled for the relief of appointment of an Advocate Commissioner to locate the survey number and also note down the physical features of suit land.
6. Learned counsel for the revision petitioner-defendant, submits that the plaintiff has filed I.A.No.160 of 2017 seeking temporary injunction, and the trial Court has granted temporary injunction and, subsequently, the injunction was made absolute. Learned counsel further submits that the suit land belongs to the defendant but the plaintiff has tampered with the revenue records by changing the Survey No.175/9 to 175/7 and appended '1' to it, making it 175/7-1, and, on the strength of the injunction order, started making illegal constructions on the suit land and, therefore, he filed a petition I.A.No.179 of 2017 before the trial Court to appoint an Advocate Commissioner for inspecting the suit land and locating and noting down the correct survey number and physical features of suit land, but the trial Court has dismissed the petition. It is further submitted that appointment of an Advocate Commissioner is required in this case for locating the survey number and noting down the correct boundaries of the suit land. It is also submitted that the defendant filed several documents i.e., pahani copies, before the trial Court to prove his

possession of the property but inspite of that the trial Court has dismissed the petition for appointment of an Advocate Commissioner.

7. On perusal of the impugned order of the trial Court, it is obvious that there is no controversy with regard to location or identity of the property. The trial Court has already given liberty to the defendant by observing that if the defendant is in possession of the suit schedule property, and if the plaintiff has tampered with the revenue records, the defendant is at liberty to prove the same by adducing sufficient evidence. It is pertinent to note that the defendant is at liberty to prove his possession of suit schedule property, since he has already filed documents before the trial Court. As far as appointment of an Advocate Commissioner for locating and noting down the survey number and physical features is concerned, it is not the case of the defendant that the identity of property is in dispute. If there is a dispute with regard to entries in revenue records and if there is manipulation or tampering with the entries in the revenue records, the revision petitioner is at liberty to prove the same by filing necessary documents and calling the witnesses. These facts cannot be resolved by appointment of Advocate Commissioner in this case.

8. Having considered the facts of the case, there are no grounds to appoint an Advocate Commissioner in this matter for locating and noting down the survey number and physical features of the suit schedule property. However, the petitioner may prove his boundaries by filing his documents like sale deeds and link documents. The defendant may seek the assistance of a Surveyor and get his land measured and get the boundary stones fixed and may produce all the particulars before the trial Court in his evidence, if he is so required to prove his boundaries.

9. With the above observations, this civil revision petition is disposed of at the stage of admission. No costs. Miscellaneous petitions, if any pending, shall stand closed.



GUDISEVA SHYAM PRASAD,J

27th December, 2017

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