

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.619 of 2018

ORDER:

Order, dated 04.12.2017 passed by the learned Junior Civil Judge, Madakasira, Anantapuramu District, dismissing I.A.No.598 of 2017 in O.S.No.101 of 2016, filed by the petitioners/defendants under Order XXVI Rule 9 CPC for appointment of an Advocate Commissioner to note down the physical features of the petition schedule property with the help of Mandal Surveyor, is challenged in the present Civil Revision Petition.

The brief facts of the case are that the respondent/plaintiff filed O.S.No.101 of 2016 against the petitioners/defendants for perpetual injunction with respect to the suit schedule property, viz., house bearing Door No.2-3 and agricultural bore service connection No.196 with boundaries, East : Road, West : vacant place, North : Land of Jayamma and South : House of Chikka Jogappa. It is stated in the plaint that the suit schedule property is situated in Survey No.97-5 and that the agricultural service connection was obtained by the plaintiff's husband and that the petitioners/defendants do not have any right whatsoever with respect to either the plaint schedule property or the bore-well.

The petitioners/defendants filed a detailed written statement denying the allegation of the respondent/plaintiff as to the bore-well situated in Survey No.97-5 and asserting that they are the owners of the land to an extent of Ac.1.12 cents in Survey No.97-8 having purchased the same by three registered sale deeds, dated 25.06.2014 and that they had constructed a house in the suit schedule property and dug a bore-well and obtained Service Connection No.196.

On an earlier occasion, in the said suit, I.A.No.334 of 2016 was filed by the petitioners seeking to appoint an Advocate Commissioner to note down the physical features of the petition schedule property for ascertaining who was in actual possession. The schedule property in the suit as well as I.A. is one and the same. The said I.A. came to be dismissed by the Court below holding that if the same were allowed, it would amount to nothing but gathering of evidence. The said order had become final.

In the present I.A., the petitioners had shown the schedule property as house bearing Door No.2-3 Agricultural bore service connection No.196 with boundaries: East : Road, West : Vacant place, North : Channel tank and land of Jayamma and South : House of Devagirigappa.

It is to be noted that in the present I.A., through appointment of Advocate Commissioner, the petitioners seek to establish with respect to the location and physical features of the petition schedule property. In other words, this is nothing but gathering of evidence. It is further to be noted that there is a variation with respect to the boundaries in the suit schedule property and the petition schedule property in the present I.A. It is further to be noted that at this stage, the plea of the defendants is with respect to their rights in Survey No.97-8. It is also to be noted that it is for the plaintiff to adduce evidence so as to establish their *prima facie* right, title and possession over the suit schedule property. In view of the same, dismissal of the present I.A. by the impugned order cannot be found fault with.

In those circumstances, there being no merit, the Civil Revision Petition is dismissed.

Miscellaneous Petitions, if any pending shall stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

10th APRIL, 2018.

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