

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.842 of 2018

ORDER:

Heard the learned counsel for the petitioners.

2. This Revision Petition is filed assailing the order dt.18-01-2018 in I.A.No.95 of 2017 in O.S.No.78 of 2017 of the VIII Additional District Judge, Chittoor.

3. The petitioners are plaintiffs in the suit. They filed the suit for cancellation of the sale deed dt.09-12-2015 and for perpetual injunction. It is their case that there is a mango garden in the subject land. They filed I.A.No.95 of 2017 under Order 26 Rule 9 CPC to appoint an Advocate Commissioner to note down physical features of the petition schedule property i.e. mango trees, bore wells, electrical motors, service connection and transformer.

4. Counter affidavit was filed by the respondent denying the existence of mango garden and taking a plea that the Advocate Commissioner cannot be appointed to gather evidence. It is also pleaded that boundaries of the petition schedule property were not mentioned in the petition for identification of the same by the Advocate Commissioner, and so even if he is appointed, it would be impossible for him to identify the same.

5. By order dt.18-01-2018, the Court below dismissed the said application.

6. It held that the petitioners are seeking appointment of Advocate Commissioner for taking measurement of the property with the help of the Surveyor, and for fixing of the boundaries to determine the factum of possession. It held that an Advocate Commissioner cannot be appointed for collection of evidence. It held that parties have to prove their possession and enjoyment by adducing oral and documentary evidence.

7. Assailing the same, this Revision Petition is filed.

8. Though learned counsel for the petitioners sought to contend that it is necessary to appoint Advocate Commissioner to note down the existence of mango trees, bore wells etc. in the petition schedule property, in my considered opinion, appointment of an Advocate Commissioner to note down the physical features of this nature would not in any way assist to dispose of the suit. The circumstances under which petitioners are seeking cancellation of the sale deed and the factum of possession of the property on the basis of which injunctive relief is being sought by the petitioners have to be decided by the Court below on oral and documentary evidence let in by the parties, and any Advocate Commissioner's report after noting down physical features, would not assist the Court in determining the said issues.

9. I therefore do not find any error of jurisdiction in the order passed by the Court below refusing to appoint Advocate Commissioner as sought by the petitioners.

10. Accordingly, the Civil Revision Petition is dismissed at the admission stage. No costs.

11. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16-03-2018
kvr

