

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 830 OF 2018

ORDER :

This Revision is directed against the order dated 22.01.2018 in I.A.No. 1615 of 2017 in O.S.No. 808 of 2017 on the file of the Principal Junior Civil Judge's Court at Anantapuramu.

The petitioner – plaintiff filed the suit for permanent injunction restraining the respondents – defendants from interfering with his possession and enjoyment over Ac.0.02 cents of vacant site in T.S.No. 2063 and 1942. The case of the petitioner is that he obtained permission for construction of a building therein. While so, the respondents have been trying to interfere with his possession and enjoyment over the subject property. Pending suit, the respondents had taken out the instant Application seeking to appoint an Advocate-Commissioner to inspect / note down the physical features of the suit schedule property, whether its extent is Ac.0.02 cents or Ac.0.03 ½ cents and to find out whether it is vacant site or not and also to note down the survey number of the suit schedule property with the assistance of Anantapuramu Town Municipal Office Surveyor by taking photos. The case of the respondents is that the petitioner suppressed registration of FIR No. 175 of 2017 for the offences punishable under Sections 417 and 420 read with Section 34 of the Indian Penal Code and that the documents filed by him are not true. It is their further case that the municipal authorities have revoked the approved plan of the petitioner on 27.10.2017 and that they are going to construct a pucca RCC building and shops over the suit schedule property with the measurement of Ac.0.03 ½

cents and that the petitioner had not mentioned the suit property as Ac.0.03 ½ cents in the suit. It is their further case that as on the filing of the suit, the petitioner is not in possession and enjoyment over the suit schedule property and 44 card size photos filed showing the construction of RCC building and shops over the suit schedule property clearly proves their possession and enjoyment over the property.

A counter-affidavit was filed by the petitioner to the I.A. After considering the material available on record, the learned Principal Junior Civil Judge ordered appointment of an Advocate-Commissioner.

Learned counsel for the petitioner contends that the respondents, by taking out the present Application, have been trying to gather evidence even before filing the written statement. He further contends that pending consideration of the Interlocutory Application filed seeking temporary injunction, if an Advocate-Commissioner is appointed, the report that may be submitted by him would be the basis for deciding the said Application which is impermissible. Further, the learned counsel asserts that appointment of an Advocate-Commissioner would cause prejudice to the case of the petitioner.

Heard Sri N. Chandra Sekhar Reddy, learned counsel for the respondents.

Having considered the respective submissions, at the outset, it may be noted that there is no bar to appoint an Advocate-Commissioner even before filing the written statement, as, appointment of an Advocate-Commissioner would enable this Court to arrive at a just conclusion. In the case on hand, it is to be

observed that the specific plea with which the petitioner approached the Court is that the subject site is vacant and that the sale deeds in respect thereof are in his favour. On the other hand, it is the specific contention of the defendants in the affidavit filed in support of the present I.A. that there exists structures and the construction is on full swing. As averred by the petitioner, if the site is vacant, reporting of the said fact by the Advocate-Commissioner would help him. Conversely, if there is a construction, as averred by the respondents, the same would *prima facie* help them and also aid the Court below to arrive at a just conclusion, as it is well-settled that the Court sees through the eyes of the Advocate-Commissioner.

As a matter of fact, initially, this Court granted interim stay for a period of 12 weeks and thereafter, the same was extended until further orders. When it was brought to the notice of this Court that the Application filed for temporary injunction has not been taken up, on account of the stay granted, it was clarified that the stay is limited to the order under Revision, with a further permission to the Court below to pass orders on the injunction petition.

Now, it is reported by the learned counsel for the respondents that the order of interim injunction which was granted earlier was modified to that of *status quo*.

Be that as it may, this Court, while dealing with Civil Revision Petition No. 3851 of 2018 on 13.07.2018, had taken a view that '*there is no specific bar and there is no hard and fast rule that Advocate-Commissioner cannot be appointed before commencement of trial or before passing an order granting*

temporary injunction and in view of the fact that appointment of an Advocate-Commissioner would help in disposing both I.A. as well as the suit effectively, this Court does not find any irregularity in the order under Revision’.

In that view of the matter, the order under Revision does not warrant any interference at the hands of this Court. Hence, the Civil Revision Petition is dismissed. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

23rd July 2018

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CHALLA KODANDA RAM, J