

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.2152 OF 2018

ORDER:

Feeling aggrieved by the order, dated 05.01.2018 in I.A.No.327 of 2017 in O.S.No.150 of 2011 passed by the learned Principal Junior Civil Judge at Suryapet dismissing the petition filed by the petitioner/defendant under Order XXVI Rule 9 of Code of Civil Procedure (CPC) seeking to appoint Advocate Commissioner, the instant Civil Revision Petition is filed by the petitioner/defendant.

The respondent/plaintiff filed O.S.No.150 of 2011 for perpetual injunction against the petitioner/defendant in respect of the suit schedule property, which is a plot in an extent of 516 square yards in Survey No.470/A4 situated at Pillalamarri Revenue Village of Suryapet Revenue Mandal, with the specific boundaries mentioned in the suit schedule. The petitioner/defendant is contesting the suit. While so, when the matter came up for defendant's evidence, it appears the defendant filed I.A.No.327 of 2017 seeking to appoint Advocate Commissioner on the ground that as per the plaint, the suit property is situated in Survey No.470/A4, but on the other hand the land shown with the said boundaries is not located in Survey No.470/A4, it is located in Survey No.472 and the defendant has been in possession and enjoyment of the same. It is further averred that the defendant is not claiming any piece of land in Survey No.470, so also the respondent/plaintiff is no way concerned with the land in Survey No.472. Since the respondent/plaintiff has taken a false plea that the suit schedule property is situated in Survey No.470 (sic 470/A4), an Advocate Commissioner may be appointed to note down the physical features of the suit schedule land and to ascertain the exact survey number, in which the suit schedule land is situated, in order to arrive at a

just conclusion in the trial. The respondent/plaintiff filed the counter opposing the petition.

The trial Court considering the respective contentions has observed that the suit was filed for perpetual injunction by the respondent/plaintiff and as such, the burden of proof that he is in possession of the suit schedule property with the given boundaries and extent rests on him and if he fails to prove his case, the suit will be liable to be dismissed and in that view of the matter, there is no need to appoint an Advocate Commissioner, which would amount to gathering of evidence. On such observations, the trial Court dismissed the petition.

Heard learned counsel for the petitioner/defendant and learned counsel for the respondent/plaintiff.

On a careful scrutiny of the order impugned, this Court finds no illegality or perversity in the order impugned. As rightly observed by the trial Court in a suit for injunction, the burden of proof is always on the plaintiff to establish that he is in possession of the suit schedule property with the specific extent and boundaries described in the plaint as on the date of filing of suit. If the plaintiff fails to prove this aspect, certainly he will be non-suited. In the instant case, the suit is one for perpetual injunction in respect of a plot in an extent of 516 square yards, said to be situated in Survey No.470/A4 in Pillalamarri Revenue Village of Suryapet Revenue Mandal with specific boundaries given in the plaint schedule. That being the case, the burden is on the plaintiff to establish that he has been in lawful possession of the plaint schedule property as on the date of filing of the suit. It is true that the defendant contends that the description of the plaint schedule suits to Survey No.472, but not Survey No.470/A4 and the plaintiff has not given the correct survey number, and on that ground, he seeks appointment of Advocate Commissioner. As already observed, the burden rests on the plaintiff to establish that the plaint schedule particulars

given by him in the plaint are correct ones and that he has been in possession of the plaint schedule property as on the date of filing of the suit. Therefore, at this stage, there is no need to appoint an Advocate Commissioner. While dismissing this Civil Revision Petition, it is observed that after taking the evidence on both sides, if the trial Court feels that appointment of Commissioner is inevitable to arrive at a just conclusion, it can do so. However, the discretion rest purely with the trial Court.

With these observations, the Civil Revision Petition is dismissed. Consequently, miscellaneous petitions pending, if any, shall stand closed. No costs.

03.07.2018
pln



U.DURGA PRASAD RAO, J