

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.3584 of 2018

ORDER:

Heard the learned counsel for petitioners.

2. This Revision Petition is filed challenging the order dt.14-06-2018 in I.A.No.232 of 2018 in O.S.No.99 of 2018 of the Principal Junior Civil Judge, Madanapalle, Chittoor District.

3. Petitioners are defendants in the suit filed by the respondent for perpetual injunction restraining the petitioners from interfering with the respondent's possession and enjoyment of the plaint schedule property.

4. The trial Court had granted order directing both parties to maintain *status quo* in I.A.No.210 of 2018 on 10-04-2018.

5. Alleging that in spite of the said order, petitioners were putting up permanent structures in the suit schedule property, the respondent filed I.A.No.232 of 2018 seeking appointment of an Advocate Commissioner to note down physical features of the property including the structures being constructed therein by the petitioners.

6. Counter affidavit is filed by the petitioners opposing the said application.

7. In the said counter affidavit, the title of the respondent to the property is disputed and the physical possession and enjoyment of the respondent is also disputed and it is contended that the plaint schedule property is the ancestral property of the petitioners. A plea is raised that appointment of Advocate Commissioner sought by the respondent would amount to securing evidence and such application cannot be ordered.

8. By order dt.14-06-2018, the Court below allowed the said application. It held that the application for appointment of an Advocate Commissioner has not been filed for proving identity of suit schedule property or for fishing evidence but only to show that the petitioners, in spite of an ad-interim order of status quo, are making construction in the suit schedule property and therefore it is just and proper to appoint an Advocate Commissioner.

9. Though the learned counsel for the petitioners sought to contend that the constructions in question were in existence even prior to the *status quo* order being granted by the trial Court, no such plea has been raised in the counter affidavit filed by the petitioners in the Court below. Therefore, for the first time such a contention cannot be allowed to be raised. As rightly held by the trial Court when the respondent has stated that the *status quo* order granted by the trial Court on 10-04-2018 is being violated by the petitioners by raising constructions, in order to verify the said fact, the Court below is

justified in appointing an Advocate Commissioner and no valid objection can be taken to such a course of action.

10. In this view of the matter, I see no error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

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

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

Date: 25-06-2018
kvr

JUSTICE M.S.RAMACHANDRA RAO

