

THE HON'BLE MS JUSTICE J.UMA DEVI

CIVIL REVISION PETITION No.2943 of 2014

ORDER:

The present revision petition arises out of the order, dated 07.07.2014, passed in I.A.No.316 of 2014 in O.S.No.488 of 2012, on the file of the II Additional Junior Civil Judge, Kurnool.

In the aforementioned interlocutory application, appointment of an advocate-commissioner to observe and to note down the existing physical features, nature of the suit schedule property, stage of the constructions made thereon by the defendants, and its location, is sought and the same is ordered.

The 1st respondent/plaintiff-Committee filed the above suit for permanent injunction against the revision petitioners/defendants restraining them from interfering with its peaceful possession and enjoyment over the suit schedule land, admeasuring Ac.1.26 cents, situated in Sy.No.1257/B2 of Nannur village, Orvakal Mandal, Kurnool District.

It appears that before commencement of the trial in the above suit, an application for appointment of an advocate-commissioner was made by the 1st respondent/plaintiff and the trial court ordered for appointment of an advocate-commissioner.

In the order impugned in the present revision, though there is no dispute as to the identity of the property, an observation is made by the court below at paragraph No.7 that there is dispute as to the identity of the property. The 1st respondent/plaintiff has given the specific boundaries to the suit schedule property in the plaint.

While ordering for admission of the revision petition, vide orders dated 03.09.2014, this court granted interim suspension of the operation of the impugned order for a limited period of six weeks. Afterwards, the revision petition came up for hearing for the first time on 11.10.2018. Therefore, this court directed the counsels on record to ascertain the exact status of the case,

having thought that in these 3 to 4 years period commissioner's warrant might have been executed.

It is reported today by both the counsels that on account of passing of the interim suspension by this court while ordering for admission of the revision petition, the trial court had not proceeded further in this case and that the trial of the case had not been taken place.

In the plaint nowhere it is stated that there is dispute as to the identity of the property. Specific boundaries to the suit schedule property are mentioned in the plaint schedule. Though no ambiguity prevails as to the identity of the property, the trial court has observed that there is dispute as to the identity of the property and accordingly allowed the application filed for appointment of an advocate-commissioner.

Therefore, I am of the view that the order impugned is not a correct one and the same is to be set aside. But it is made clear that the order above does not preclude either of the parties to make the application of similar nature, if they feel it necessary to prove their respective versions.

The civil revision petition is allowed accordingly. But there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

J.UMA DEVI ,J

Date: 24.12.2018
Dsr