

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**CIVIL REVISION PETITION No. 3851 OF 2018**

**ORDER :**

Challenging the order dated 08.06.2018 in I.A. No. 132 of 3018 in O.S. No. 27 of 2018 on the file of the Principal Junior Civil Judge's Court at Dharmavaram, appointing an advocate-commissioner to visit and note down the physical features of the suit property and to submit his report along with a plan, the present Revision is filed by the petitioner - plaintiff.

Heard learned counsel for the petitioner at length. He vehemently submits that allowing the I.A. for appointing an Advocate-Commissioner, pending consideration of the Application filed by the plaintiff for grant of temporary injunction is nothing but allowing collection of evidence at the instance of the parties to the suit, which is impermissible. The learned counsel fairly submits that there are number of decisions of the Apex Court as well as this Court both justifying appointment of Advocate-Commissioner and also taking contra view. Hence, he submits that the suit having been filed for permanent injunction, the local inspection that is ordered through the Advocate-Commissioner would be nothing but gathering evidence and if the same is allowed, it would be contrary to the settled principles and that parties to the suit have to succeed based on the evidence that may be adduced in the Court.

Perused the record.

It is the specific case of the petitioner - plaintiff that the suit schedule land is an agricultural land and the respondents - defendants are the neighbouring land owners and they are trying

to encroach into his land and in those circumstances, he sought permanent injunction restraining the defendants. It is also his specific assertion that he is in possession and enjoyment of the property and further, his name is entered in the revenue records as such.

In the written statement filed by the respondents - defendants, the description of the disputed property was disputed and a separate schedule was appended thereto. Apart from that, in paragraphs 10 and 11, it was specifically pleaded that the defendants and their father were raising rain-fed crops and they spent lot of amount and removed the boulders in the property; that due to continuous drought conditions, they sustained heavy loss; hence, in June 2007, they had leased out the said land to a registered firm styled as B.N.R. Constructions and since then, it has been in possession and enjoyment of the land mentioned in the Schedule of the written statement and the lease has been extended from time to time. It has been further stated that the lessee of the defendants dug a bore well for drinking water, took electrical services, constructed sheds; the entire land in the suit schedule S.No. 104-2C has been kept fallow and used by the firm as per their construction needs. It has been also submitted that the plaintiff manipulated and fabricated the record of rights and created wrong survey number and there is no such survey number as stated in the plaint schedule.

By reiterating the averments in the written statement, the respondents - defendants sought appointment of an Advocate-Commissioner for noting down the physical features and status of the site. The objection that is raised by the petitioner is that the

Advocate-Commissioner cannot be appointed without framing the issues and further, even before the I.A. filed by him for grant of temporary injunction is decided. It is also the specific contention of the petitioner that appointment of the Advocate-Commissioner would result in gathering evidence and hence, the same is impermissible. The argument advanced by the learned counsel for the petitioner is liable to be rejected, in view the facts of the present case, wherein the relief that is being claimed by the plaintiff is for permanent injunction with the specific plea that the subject land is an agricultural land, whereas the defence in the written statement is to the effect that the land is ceased to be used for the purpose of agriculture as on date and the same is in possession of a construction company. In the above factual scenario, for deciding the *lis* in the suit, the appointment of an Advocate-Commissioner would certainly be helpful as the land in possession of a 3<sup>rd</sup> party can as well be appreciated with the help of the report of the Advocate-Commissioner

In those circumstances, since 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 and accordingly, the Civil Revision Petition is dismissed as devoid of merit.

It is needless to mention that the observations made hereinabove shall not be construed as this Court expressing any opinion on the rights of the parties to the suit. No costs.

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

13<sup>th</sup> July 2018

ss/eha

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**CHALLA KODANDA RAM, J**

