

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 3920 of 2018

ORDER:

1) Assailing the order dated 12.06.2018, passed in I.A.No.10 of 2018 in O.S.No.150 of 2011 on the file of the Additional Junior Civil Judge-cum-Judicial Magistrate of First Class, Pithapuram, wherein the request of the petitioner to appoint an advocate-commissioner, is rejected, the present Civil Revision Petition came to be filed under Article 227 of the Constitution of India.

2) The facts in issue are as under:

The petitioner/plaintiff filed O.S.No.150 of 2011 for declaration of title of plaintiff in plaint schedule property and consequentially for permanent injunction restraining the defendants and their men from interfering in any manner whatsoever with the plaint schedule property including construction of compound wall therein. A written statement came to be filed by the defendants in the month of March, 2012. The averments in the plaint which are relevant for deciding the I.A., show that the plaintiff claims to be absolute owner of the plaint schedule property, which is a part of the property gifted by his paternal grand father by name Anisetty Atchi Reddy, to him under registered gift deed

dated 16.08.2001. The paternal grandfather of the plaintiff was said to be the owner of the entire property, part of which was purchased by him, while part of it is his ancestral property. Under gift deed dated 16.08.2011, the property shown as ABCDEFGI in the plaint plan was said to have been gifted to the plaintiff. The plaintiff being minor, his father accepted the gift deed and took possession of the property. On the same day another gift deed came to be executed by the grandfather of the plaintiff in favour of the mother of the plaintiff, which is marked as DEFC in the plaint plan. Since 16.08.2008, the plaintiff and his mother became the owners of the respective properties gifted to them by the grandfather of the plaintiff. In the written statement, the defendants disputed the execution of registered gift deed, the ownership of the land by the grandfather of the plaintiff and also gifting part of the property in favour of the mother of the plaintiff. It has been specifically pleaded that the defendants are not aware about the alleged registrations in the name of the plaintiff and his mother. After commencement of trial, reiterating the averments in the plaint, the present I.A. came to be filed seeking the following relief.

“To appoint an advocate-commissioner to visit the suit locality and note down the physical

features and also determine whether the plaint schedule property is portion of gift deed dated 16.08.2008 belonging to plaintiff by measuring the property of plaintiff with the help of title deeds by taking assistance of a qualified surveyor and to answer work memos, if any.”

3) A counter came to be filed reiterating the contents in the written statement.

4) Considering the rival submissions made, the Court below rejected the request of the petitioner. Challenging the same, the present Civil Revision Petition is filed.

5) The request of the petitioner appears to be for appointment of an advocate-commissioner to do the following acts ie. (1) to visit the suit locality and note down the physical features; (2) to determine whether the plaint schedule property is part of gift deed dated 16.08.2008 by measuring the property of the plaintiff with the help of title deeds and taking the assistance of qualified surveyor; and (3) to answer the work memos, if any, and file his report along with the detailed plan.

6) From the request made, it is very clear that the plaintiff wants the advocate-commissioner not only to identify the suit locality in a suit for title but also do the exercise and give a report as to whether the property in the

gift deed and the property in the plaint schedule are one and the same. *Prima facie* I am of the view that this request of the plaintiff to identify the property in the plaint schedule and the gift deed is farfetched. Virtually the plaintiff is trying to establish a fact which he should do so by adducing evidence and marking documents in the trial.

7) It is also to be noted here that suit is of the year 2011 and the written statement came to be filed in the year 2012. After commencement of trial and when the Court is insisting for doing old matters, this application appears to have been filed. But that will not be a ground to reject the plea if it is otherwise tenable.

8) The question would be whether the request of the petitioner to appoint an advocate-commissioner to note down the physical features is warranted in the given case.

9) Admittedly this is a suit for declaration of title, in which the plaintiff has to establish that he has right over the property by adducing the evidence. Question of appointing an advocate-commissioner would arise only when the property could not be identified and that lot of voluminous evidence is required to identify and localize it. As seen from the plaint averments, the main source of title of the plaintiff is gift deed said to have been executed by the grandfather of

the plaintiff. As stated earlier, under the guise of identifying the suit schedule property through an advocate-commissioner, the plaintiff wanted to appoint the advocate-commissioner to find out as to whether the plaint schedule property and the property mentioned in the gift deed are one and the same, which request cannot be accepted. When the plaintiff is not aware as to where the property is, it is strange as to how the plaintiff could have filed a suit for declaration of title. The present relief is nothing but gathering evidence in the guise of localizing the property through an advocate-commissioner. Hence, I see no reason to interfere with the impugned order.

10) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. The miscellaneous petitions, if any pending, in this Civil Revision Petition shall stand closed.

28.09.2018
gkv

C. PRAVEEN KUMAR, J