

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

CIVIL REVISION PETITION No.3977 of 2018

ORDER:

This Revision is filed by the petitioners assailing the order dt.06-06-2018 in I.A.No.72 of 2017 in A.S.No.10 of 2014 of the VIII Additional District Judge, Chittoor.

2. Petitioners are plaintiffs in the suit, out of which the said appeal arises. They had sought the relief of declaration of their title to the plaint schedule property and for a perpetual injunction in the suit. The suit was dismissed.

3. Thereafter they preferred the said appeal before the VIII Additional District Judge, Chittoor. In the said appeal, they filed I.A.No.72 of 2017 under Order XXVI Rule 9 C.P.C. to appoint an Advocate-Commissioner to localize the suit schedule property and to note down the existing physical features with the assistance of Mandal Surveyor, Palamaner, Chittoor District.

4. In the affidavit filed in support of the said application, petitioners contended that in the suit the respondents had taken a plea that the subject land was assigned to some landless poor persons, who alienated the same to petitioners, that the proceedings under Act 7 of 1977 were initiated and the entire land was resumed by the State Government and thereafter Ac.3.00 of land was handed over to the Housing Department under Rajiv Gruhakalpa etc., and to prove that

the petitioners are still in possession and enjoyment and their houses are still there in the plaint schedule property, there is need to appoint an Advocate-Commissioner to note down the physical features with the help of Mandal Surveyor.

5. This application was opposed by respondents taking the plea that petitioners cannot gather evidence through Advocate-Commissioner.

6. This was accepted by the Court below and the said I.A. was dismissed.

7. Assailing the same, this Revision is filed.

8. Though learned counsel for petitioners contended that no prejudice would be caused to the respondents and the report of the Advocate-Commissioner would help in determining whether the land was resumed and handed over to the Housing Department and also whether petitioners are in possession of the property, I am unable to agree with the said contentions for the reason that Advocate-Commissioner cannot be appointed to collect evidence for a party. The possession of the petitioners as on date of filing of the suit has to be established by petitioners through other evidence and not through evidence collected through Advocate-Commissioner.

9. Therefore, I see no reason to interfere with the impugned order which is subject matter of the Revision.

10. The Civil Revision Petition is accordingly dismissed at the stage of admission. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 03-08-2018

Vsv

