

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.4213 OF 2018

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, challenging the order in I.A.No.140 of 2018 in O.S.No.17 of 2015 dated 29.06.2018, passed by the Junior Civil Judge, Railway Kodur, Kadapa District.

The petitioner is the defendant in O.S.No.17 of 2015, which was filed for injunction simplicitor and this petitioner contested the suit, mainly on the ground that the suit schedule property belongs to Bobbilala Venkataiah and Bobbilala Chinnabbi, who are the brothers and they are in possession and enjoyment of the suit schedule property since long time and their names were mutated in the revenue records in Sy.No.21/2 of an extent of Ac.2-27 cents in the register holding certificate issued by the Sub-Registrar Office, Chitvel, Kadapa District. Further it is submitted in the affidavit in I.A.No.140 of 2018 that, the respondent was never in possession of the suit schedule property, while reiterating the allegations made in the written statement, requested to appoint an Advocate Commissioner on the following ground extracted:

“The respondent/plaintiff who is powerful person and he got five brothers and their brother's sons nearly 12 members. The plaintiff family members more than 20 to 25 family houses near the suit schedule mentioned property. The respondent/plaintiff is ready to at any time to demolish the bathrooms laboratory and trees in the mentioned schedule property, if the commissioner is appointed the whole truth will come out.”

It appears from the allegation made above, that the Advocate Commissioner was sought to be appointed to note down the physical features of suit schedule property and the constructions of bathrooms lavatory and trees existing thereon, as the respondent/plaintiff is contemplating the demolish the bathrooms lavatory and trees in the suit schedule property.

The respondent/plaintiff filed counter in I.A.No.140 of 2018 denying the material allegations and the Trial Court upon hearing argument of the both the counsel, dismissed I.A.No.140 of 2018. Aggrieved by the said order, the present civil revision petition is filed raising a specific contention that the Trial Court did not consider the necessity of appointing an Advocate Commissioner, which enables the Trial Court to decide the suit effectively and no prejudice would be caused to the respondent/plaintiff even if an Advocate Commissioner is appointed. On the other hand, Advocate Commissioner would be helpful to the Court to decide the suit effectively and thus, the Trial Court committed an error in dismissing the I.A.No.140 of 2018 and prayed to set-aside the same.

Admittedly, the suit is for injunction simplicitor based on possession. This petitioner is the defendant in the suit, who asserted that he is in possession and enjoyment of the suit schedule property. The plaintiff/respondent also asserted that he is in possession and enjoyment of the same. Thus, the rival claims are regarding possession over the suit schedule property. But, strangely, I.A.No.140 of 2018 was filed to appoint an Advocate Commissioner to note down the existing physical features of suit

schedule property and the constructions of bathrooms lavatory and trees existing thereon, as the respondent/plaintiff is contemplating the demolish the bathrooms lavatory and falling trees in the suit schedule property.

When the suit is filed by the respondent/plaintiff for injunction simplicitor, it is for him to establish that he is in lawful possession and enjoyment of the property as on the date of filing suit and that the defendants or his men are trying to infringe or invade the legal right of the plaintiff, it gives to cause of action for filing a suit for injunction simplicitor. The plaintiff has to prove his positive case by adducing independent evidence and the plaintiff is not entitled to take advantage of the weakness of the defence of defendant. Therefore, it is for the plaintiff/respondent herein to establish his lawful possession and enjoyment of the property as on the date of filing the suit. It is also alleged that an attempt was made by the petitioner/defendant to infringe or invade the legal right. But, the petitioner/defendant is not required to establish his lawful possession and enjoyment by adducing positive evidence before the Court.

Even otherwise, the relief claimed in I.A.No.140 of 2018 is to appoint an Advocate Commissioner to note down the existing physical features of suit schedule property and the construction of bathrooms lavatory and trees existing thereon, as the respondent/plaintiff is contemplating the demolish the bathrooms lavatory and falling trees in the suit schedule property. Whether those bathrooms lavatory and trees existing thereon belong to the petitioner/defendant is a question to be decided while determining

the possession of property. If, really, the respondent is trying to demolish the bathrooms lavatory and trees existing thereon of this petitioner/defendant, allegedly in the suit schedule property, the remedy available to this petitioner is elsewhere, but not in the present suit. Therefore, appointment of Advocate Commissioner to note down the existing physical features of suit schedule property and the construction of bathrooms lavatory and trees existing in the suit schedule property would amount to collection of evidence, which is impermissible in the suit filed for injunction simplicitor. In such circumstances, there is no need for appointment of advocate commissioner for collection of such evidence to find out the exact area of property in possession of the respondents in view of decisions reported in (i) **Sagi Vijaya Ramachandra Raju and others v. Koppiseti Satyanarayana and others¹**, (ii) **Batchu Narayana Rao v. Batchu Venkata Narasimha Rao²**, (iii) **Koduru Sesha Reddy v. Gottigundala Venkata Rami Reddy and others³**, and (v) **Yenugonda Bal Reddy v. Manemma and others⁴**. In all the above four judgments, this Court consistently held that appointment of advocate commissioner, in a suit for declaration of title and permanent injunction or in a suit for injunction simplicitor, to note down physical features amounts to collection of evidence.

Therefore, the Trial Court rightly dismissed I.A.No.140 of 2018 and the order of the Trial Court does not call for any interference of this Court at this stage, since the order passed by

¹ 2009(6) ALT 353 = 2009(5) ALD 459

² 2010 (5) ALD 83

³ 2006(1) ALD 372

⁴ 2011(3) ALT 232

this Court is purely discretionary in nature and does not suffer from any illegality or irregularity and it is in accordance with law. Hence, this Court cannot reverse the order passed by the Trial Court while exercising power under Article 227 of the Constitution of India.

In the result, civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date: 10.08.2018

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