

SMT JUSTICE T. RAJANI

CIVIL REVISION PETITION No.4536 of 2018

ORDER:

This revision is directed against the order of the Junior Civil Judge, Rajam in IA.No.319 of 2017 in OS.No.33 of 2017 dated 05.07.2018.

2. Heard the counsel for the petitioners. None appears for the respondent.

3. The impugned order was passed in a petition filed by the petitioners herein under Order 26 Rule 9 of the Code of Civil Procedure seeking for appointment of an Advocate Commissioner. The Court below dismissed the said petition, against which this revision is preferred on the grounds that the court below dismissed the petition on the grounds that the petition is filed to collect evidence, which is not permissible and the said order is erroneous and though the petition was filed long back, but it was observed that it is filed only to drag on the matter. On the above grounds, the revision petitioners seek this Court to set aside the impugned order.

4. It would be profitable to peruse the affidavit filed by the petitioners in the Court below along with the petition. The petition is filed stating that the plaint schedule land originally belonged to the petitioners 2 and 3, who are defendants 2 and 3, through settlement deed dated 20.04.2012. Since then they have been in possession of the suit schedule property and planted mango trees, which are aged five years. Due to family disputes, the plaintiff filed the suit. In the meantime, the plaintiff tried to plough the land with the tractor

for destroying the mango trees. Hence, they sought that the Advocate Commissioner be appointed to note the physical features of the plaint schedule land and to note the age of the trees and number of mango trees lying in the plaint schedule land and to note the existing boundaries of the plaint schedule land.

5. Counter was filed by the respondent/plaintiff contending that the after he purchased the land, by virtue of the sale deed dated 18.02.2017, mango trees were planted by him in the said land.

6. The counsel for the petitioners, based on the averments made in the counter with regard to the age of the trees, now argues that when the contention of the respondent is that the mango plants were planted only after the sale deed dated 08.02.2017 and when the contention of the petitioners is that they were planted five years back, it would be necessary for the Advocate Commissioner to inspect the land and note down the age of the mango trees.

7. But as can be seen from the petition, the Commissioner was sought to be appointed to note down the age of the trees, allegedly, planted by the petitioners. Going by the relief sought for by the petitioners, the said petition need not be ordered, as the petitioners, if they consider that there is any obstruction being caused by the respondent for their possession on the suit schedule property, can seek for injunction restraining the respondent and if there is any violation of the injunction order, they can file appropriate petition.

8. Though a contention is made that the respondent is trying to plough the land, it does not appear that any petition was filed to

restrain the respondent from interfering with the possession of the petitioners. The age of the trees came into dispute only after the counter is filed. Whether the relief sought for is such as would require appointment of Advocate Commissioner, has to be assessed only from the averments of the petition. Simply because the respondent takes a plea that he has planted mango trees in the year 2017 and simply because he raises such a contention, the age of the trees becomes disputed question of fact, the petitioners cannot seek for appointment of Advocate Commissioner on the said ground. The Court below has rightly observed that since there is no dispute with regard to the extent of the land, which is in dispute, the same can be proved by adducing oral and documentary evidence. In the above circumstances, the decision in VARALA RAMACHANDRA REDDY v. MEKALA YADI REDDY¹ relied upon by the counsel for the petitioners does not help the petitioners as the facts dealt with in the said decision are completely different from the facts in this case. The Commissioner in the said decision was thought fit to be appointed, as demarcation of the said property was also necessary in the said case.

Hence, the civil revision petition dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J

December 5th, 2018
DSK

¹ 2010 (4) ALD 198