

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION NO. 4655 OF 2018

Date : 12 -10-2018

Between:

PENTAREDDY BAL REDDY S/o Joji Reddy
aged 72 years Occ Agriculture
R/o Siddhartha Nagar Kazipet Hanamkonda Warangal District

Petitioner

And

VEMULA KARUNA SENA REDDY S/o Venkat Reddy aged 42 years Occ
Agriculture R/o H No 31-01-22
Reddy Colony Hanamkonda Warangal District

Respondents

The Court made the following:



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ORAL ORDER:

This CRP is filed by the Petitioner/Defendant aggrieved by the order in I.A 128 of 2017 in O.S No 575 of 2016 dismissing the petition to appoint an advocate commissioner under order 26 Rule 9 of CPC.

2. Respondent/Plaintiff filed suit to grant decree for permanent injunction against the petitioner. It is contended that he is the owner and possessor of suit land to an extent of Ac. 4.15 gts in Sy no 366/A/2 situated at Hanamkonda village, Warangal District, whereas petitioner/defendant was interfering with his possession and enjoyment. Petitioner claimed that he was owner and in possession of land to an extent of Ac 5.27 gts in Sy no 369/1/1, out of which he sold Ac 4.00 gts and is in possession of the remaining land to an extent of Ac 1.27 gts. Petitioner contended that appointment of an advocate commissioner will help decide as to whether the suit schedule property is located in Sy no 369/1/1 or in Sy. no 366/A/2.

3. Respondent/Plaintiff denied the ownership claims of the petitioner of the above extent of land and contended that he does not own land as claimed by him. He would further contend that defendant has not filed any authentic documents to substantiate his claim. The trial court did not accept the plea of the petitioner to appoint an advocate commissioner.

4. Heard learned counsel for petitioner and learned counsel for respondent. Perused material on record.

5. In substance claim of the respondent is that the petitioner is interfering with the possession and enjoyment of land in Sy.no 366/A/2 whereas petitioner is claiming that he is owner of land in Sy. No. 369/1/1. These are two different survey numbers. In a suit for injunction, the burden is on the plaintiff to show that he is the owner of suit land and on the date of institution he is in possession of the said

land. The defendant has to show that he is not interfering and can dispute the ownership claim as well as the claim for possession of the plaintiff. Thus, by conducting survey of two different survey numbers, having regard to prayer in the suit, it would not aid the trial Court in coming to proper conclusion of the issue involved. Further serious objection is raised by the plaintiff on ownership claim of the defendant on land in Sy. No. 369/1/1. This contention of the plaintiff is not controverted by the defendant.

6. It appears that no material is placed on record to show semblance of ownership by the defendant. This fact was noticed by the trial court and trial court observed that no useful purpose would be served to appoint an advocate commissioner. Trial court also observed that plaintiff has given specific boundaries in the suit schedule and it is for the plaintiff to prove that within those boundaries he is in possession of the land claimed by him.

7. There is no absolute bar in appointing advocate commissioner even at the initial stage. However, appointment of advocate commissioner depends on the facts of the case. It is for the trial Court to consider the desirability of appointment of advocate commissioner in given facts of the case. In the facts of this case, I do not see any error in the view taken by the trial Court in rejecting the application warranting interference by this court.

8. The Civil Revision Petition fails and accordingly dismissed. No costs. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 12-10-2018
TVK/

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