

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4749 OF 2018

ORDER:

Challenging the order, dated 12.07.2018, in I.A.No.62 of 2017 in O.S.No.32 of 2013 passed by the learned Junior Civil Judge, Nandikotkur, Kurnool District, the present Civil Revision Petition is filed.

This is a case where the petitioners-plaintiffs sought appointment of an Advocate Commissioner. The affidavit filed in support of the application for appointment of advocate Commissioner reads as under:

“3. I submit that my side evidence is completed and the above suit is posted for evidence of defendants side. I submit that the suit schedule site is disputed by the defendants. I submit that for just decision of the case, for appointment of Commissioner is very essential to locate the suit schedule site as per Register Sale Deed, dated 12.03.1986 executed by Dudekula Abdul Rahiman s/o Dudekula Teacher Silar Ahammed in my favour and sale deed of defendants and note down the physical features of suit locality with the assistance of Mandal Surveyor. If the suit schedule site is not located by the Commissioner I will be put to great loss and much injustice will be caused to me.”

A counter affidavit is filed by the respondents-defendants opposing the appointment of Advocate Commissioner. Further, it is specifically asserted that the petitioners have no right title over the suit schedule property and their vendor himself has no right to sell it and execute the Registered Sale Deed. The alleged possession of the petitioners over the plaint schedule

property was also denied. It is further asserted that the suit schedule property was in their possession since the date of its purchase and in fact they established a Stone Slab Polishing Unit in the said property and running the unit since 2010. It is further asserted that in the complaint given by the petitioners, on 22.10.2012, to the Station House Officer, Nandikotkur, it is clearly mentioned that the respondents have been running Stone Slab Polishing Unit and the same has also been admitted by the 2nd petitioner during his evidence as P.W.1. Therefore, there is no dispute with regard to the physical features existing in the site. It is further submitted that the I.A.No.383 of 2014 filed by the petitioner seeking amendment of plaint for adding reliefs of recovery of possession, declaration of title over the suit schedule property and for mandatory injunction, were also refused on 12.04.2016, which order also came to be confirmed by the High Court vide orders dated 12.04.2016 in a Civil Revision Petition.

Heard the learned counsel for the petitioners.

Perused the record. It is for the petitioners-plaintiffs to establish the right, title and possession over the suit schedule property. As can be seen from the affidavit filed in support of I.A.No.62 of 2017 in O.S.No.32 of 2013, there is no specific purpose, which has been asserted for appointment of Advocate-Commissioner. Merely because the defendants have denied the petitioners' right and title over the property, the Advocate-Commissioner need not be appointed, as there is no dispute

with respect to the boundaries. As it is the assertion of the petitioners-plaintiffs that the respondents are trying to grab their property, they shall seek injunction *prima facie* establishing his right, title and possession over the property. As per the counter-affidavit filed by the respondents, they have specifically asserted that they are in possession of the property by virtue of the sale deed, dated 23.08.2008. As the purpose for which the Advocate-Commissioner was sought to be appointed being unclear and as it is already admitted by the petitioner-plaintiff himself in cross-examination that the respondents are running Stone Slab Polishing Unit, the issue as to whether the respondents are trying to grab the property of the petitioners-plaintiffs, is required to be decided in the main suit. As no useful purpose would be served by appointing an Advocate Commissioner, this Court finds no fault in the order under revision dismissing the I.A.No.62 of 2017 in O.S.No.32 of 2013.

Accordingly, the Civil Revision Petition is dismissed. No costs.

Consequently, the Miscellaneous Petitions pending, if any, shall also stand dismissed.

CHALLA KODANDA RAM, J

Dated:24.10.2018.

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