

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

C.R.P. No.4811 of 2018

O R D E R:

Heard the counsel for petitioner/plaintiff and Sri K.S.Gopala Krishna, Counsel for respondent/4th defendant.

2. This Civil Revision Petition is filed assailing the order dt.31.07.2018 in I.A.No.90 of 2018 in O.S.No.457 of 2014 of the Senior Civil Judge, Palamaner, Chittoor District.

3. Petitioner is the plaintiff in the suit. He filed the said suit for permanent injunction for restraining the respondents from interfering with his alleged possession and enjoyment over the plaint schedule property.

4. In the plaint, he mentioned that the property in question is a house site in survey No.146/1 in 14th Block, 14th Ward, Palace Road, adjoining the house bearing No.14-223, Railway Connection Road, within specified boundaries in Kuppam Town.

5. In para 5 of the plaint, the petitioner mentioned as under:

“5. The plaintiff submits that the plaint schedule mentioned property is house plot measuring East to West 45 feet and North south 25 feet, the plaintiff has purchased the property with a view to raise residential building in the suit property. With that intention, he had applied for approval of plan from the Panchayat and started laying foundation on 13.12.2010. The plaintiff has laid three rows of three cement concrete pillars, in each row running East to West 28 feet, North to

South 25 feet. He has also raised one pillar on the western side.

6. Written Statement was filed opposing the said claim.

7. During the trial, petitioner filed electricity consumption charges receipt and demand notice for a service connection No.06716 and proceedings of the Grampanchayat Kuppam with approved building plan and miscellaneous receipt.

8. After going through the same, the respondents filed I.A.No.90 of 2018 under Order XXVI Rule 9 CPC stating that the above documents did not relate to the suit schedule property and have no relevance to the property. It is alleged by the 4th defendant that her late husband constructed a shop-room building after obtaining a building plan approval from the Grampanchayat, and had also obtained electric service connection No.05609 but no door number has been assigned to the said building. It is also alleged that the petitioner is making wrongful claim over the building built by the late husband of the respondent, as if it had been constructed by the petitioner by filing irrelevant documents.

9 Appointment of Advocate-Commissioner was therefore sought to note the physical features of the building, the electricity service connection in the building, boundaries and measurements of the building, apart from taking the photographs of the building and to note commodities kept or

stored in the building for business purpose, name board on the front of the building, etc.

10. This application was opposed by the petitioner stating that evidence is sought to be collected by the respondent, which is impermissible and taking a plea that the petitioner had completed construction of the building in 2013. It is also stated that the petitioner had inducted the mother of the respondent as a tenant to sell rice.

11. By order dt.31.07.2018, the said application was allowed.

12. Assailing the same, this Revision is filed.

13. Counsel for petitioner contends that the Court below ought not to have allowed the application since it amounts to collecting of evidence.

14. This is refuted by the counsel for petitioner, who supported the order passed by the Court below.

15. Admittedly, the question, whether the service connection No.06716 is there in the subject property or service connection No.05609 is in the subject property, requires to be noted in order to verify the contentions of both sides. That apart, in the plaint, petitioner had only mentioned the existence of three rows of three cement concrete pillars running East to West in each row with

specific measurements and also a pillar on the Western side, whereas the respondent has claimed that the entire building is completed, though door number is not yet assigned.

16. In order to verify the truth and veracity of the statements of both the parties, it is necessary that an Advocate-Commissioner is appointed to note service connection number in the building in the subject property, measurements of the building and its boundaries. It is also necessary to take photographs of the subject building, to know whether it is completed structure or an incomplete structure.

17. However, as regards noting the commodities kept or stored in the building or to note the name board in front of the said building, such acts amount to fishing evidence and for such purpose, the Advocate-Commissioner cannot be appointed.

18. Therefore, the order dt.31.07.2018 in I.A.No.90 of 2018 in O.S.No.457 of 2014 of the Senior Civil Judge, Palamaner, Chittoor District is modified to the extent of permitting the Advocate-Commissioner to only note down (a) electricity service connection of the subject building (b) measurements of the building (c) boundaries of the building, and (d) to take photographs of the building.

19. The Civil Revision Petition is allowed partly as indicated above. No order as to costs.

20. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

01st October, 2018.

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