

SMT JUSTICE T. RAJANI

CIVIL REVISION PETITION No.5045 of 2018

ORDER:

This civil revision petition is filed by the petitioner aggrieved by the order dated 31.07.2018 in IA.No.88 of 2015 in O.S.No.245 of 2014 passed by the Junior Civil Judge, Bellampalli, by virtue of which the Court below dismissed the petition, filed by the petitioner, seeking for appointment of an Advocate Commissioner.

2. The grounds on which this revision is preferred are that the petitioner is the absolute owner and possessor on the land in Sy.No.12/1, in an extent of Ac.0.05 cents situated at Akenapelli Shivar of Bellampally Mandal. When the respondents tried to interfere into the possession of the land, the petitioner filed O.S.No.245 of 2014 and IA.No.174 of 2014 seeking injunction. The respondents made their appearance on 09.12.2014 and gave an undertaking that they will not enter into the said land and no brick wall would be constructed, to dispossess the petitioner. Thereafter, the Court below passed an order of status quo to be maintained by both parties. The petitioner was assigned an extent of Ac.0.05 cents of land whereas the respondents are illegal encroachers of the Government land in the same survey number. An EP filed by the respondents 1 and 2 was dismissed basing on the report of the Tahsildar. In spite of status quo order, the respondents constructed an obstructive cement wall towards the door, by putting a lock from back side, in order to obstruct the petitioner from free ingress and egress towards the back yard and also planted small coconut tress and erected fencing in order to

dispossess him from the land. The petitioner filed interlocutory applications with regard to disobedience of the Court order and for restoration of previous possession of the said land, which are pending.

The respondents therein filed a counter that they purchased the land from Gurram Rayamallu through ordinary sale deed in the year 1981 and are in possession of the property. The respondent violated the order in IA and the petitioner filed the present IA for appointment of Advocate Commissioner. Based on the above, the petitioner seeks this Court to set aside the impugned order.

3. Heard the learned counsel for the petitioner as well as the counsel for the respondents.

4. The order of the Court below shows that, considering that the prayer in the petition is to measure the land of the respondents, it dismissed the petition.

5. At the hearing, the counsel for the petitioner submits that the Court below passed a cryptic order, without any reasons and that even if it is a case of encroachment, Commissioner can be appointed to see whether there is any encroachment. He relies on a decision of this Court in *BANDI SAMUEL v. MEDIDA NAGESWARA RAO* [CRP.No.338 of 2016 DATED 04.11.2016] wherein this Court held as under:

“... Evidence in this regard of encroachment would only be available on the spot and no amount of oral evidence would establish the fact and for that conclusion referred the earlier expressions in relation to the nature of lis and requirement of localization of the disputed property under encroachment or otherwise, where demarcation of the disputed property is

involved it is a fit case for appointment of Advocate Commissioner, as held by the Apex Court in *Haryana Waqf Board* supra, and same was followed in *Smt. Donadulu Uma Devi* supra and there is no time limit for appointment of Advocate Commissioner as even an *exparte* Advocate Commissioner for localization and noting of physical features can be appointed at the time of filing suit and delay in filing is otherwise not a ground to negate. It was ultimately in saying evidence to prove allegation of encroachment is of a peculiar nature which is available on the spot and if Advocate Commissioner is not appointed grave prejudice would be caused ...”

6. But, in this case, the case of the petitioner is not that of an encroachment. The suit is filed seeking permanent injunction and even in the petition filed seeking appointment of an advocate commissioner, the averment at para 11 is that the respondent has been trying to encroach the lands of others including other Government agencies. There is no averment in the petition that the respondent has encroached into the land of the petitioner. The prayer, as rightly contended by the respondent's counsel, is to measure the land of the respondents in order to avoid loss, inconvenience and hardship to others, including the petitioner. The said prayer seems to be strange. The petitioner cannot step into the shoes of the others, who are prejudiced by the encroachment of the respondents. When the case of the petitioner is that the respondents are only making efforts to encroach into his land, appointment of Advocate Commissioner would not serve any purpose, as no encroachment on the land of the petitioner would be found on spot. Apart from that the grounds of revision would reveal that a petition was filed with regard to violation of the status quo order granted by the Court. It goes without saying

that the present petition is not filed for the said relief. Hence, this Court does not find any infirmity in the order of the Court below.

Hence, the civil revision petition is dismissed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed. There shall be no order as to costs.

October 8, 2018
DSK

T. RAJANI, J

