

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.2774 of 2012

ORDER

This revision under Article 227 of the Constitution of India is filed challenging the order dated 06.06.2012 passed in I.A.No.71 of 2012 in O.S.No.268 of 2009 by the Judicial Magistrate of First Class, Special Mobile Court, Kurnool, dismissing the application filed under Order XXVI Rule 9 read with Section 151 of CPC, on the ground that appointment of Advocate Commissioner in a suit for injunction amounts to collection of evidence.

2. The contention of petitioner/defendant is that in a suit for injunction, when there is a dispute with regard to the measurements of the land, a Commissioner can be appointed, but the trial Court did not consider the contention in proper perspective and committed error and therefore, she requested this Court to set aside the order impugned by appointing the Advocate-Commissioner.

3. The counsel for petitioner Sri S. Lakshminarayana reddy, reiterated the contentions and placed reliance on the judgment of this Court in **Varala Ramachandra Reddy v. Mekala Yadi Reddy and others**¹ in support of his contention.

4. In view of the specific contentions, it is relevant to advert to the allegations made in the affidavit i.e., the nature of claim made in paragraph No.3 of the affidavit, wherein the petitioner herein contended that the suit site does not belongs to the

¹ 2010 (4) ALD 198

respondent/plaintiff to prove her contention, it is necessary to appoint an Advocate Commissioner to measure the house of respondent/plaintiff as per the registered sale deed dated 2.11.1987 i.e., Ex.A1. A copy of plaint and written statement are placed on record. As seen from the plaint, specific boundaries are mentioned in the schedule annexed to the plaint i.e., North: 30 feet road; South: Land in S.No.72; East: Eastern half of plot No.176 of Shalimiah; West:30 feet road. The respondent/plaintiff asserted that he is in possession and enjoyment since the date of purchase of property under Ex.A1.

5. The petitioner/defendant filed written statement raising several contentions, but without disputing the specific boundaries of property, she disputed the measurements.

6. When the suit is filed for grant of perpetual injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the property, which is described with specific boundaries in the schedule, taking measurements of the property is irrelevant since the respondent/plaintiff is claiming possession over the land within the boundaries mentioned in the schedule. The title of the parties is irrelevant in a suit for injunction. But it can be gone into for limited purpose. Even otherwise, if measurements are in dispute, the boundaries will prevail and if the boundaries are in dispute, the measurements are prevail as per the settled law. The judgment of this Court in **Varala Ramachandra Reddy's** case, referred supra, is clear that when there is a dispute with regard to the level of land, a Commissioner can be appointed.

But, in the present case, the affidavit is silent as to the reason for appointment of Advocate Commissioner, except making a mention about the nature of claim. Therefore, in the absence of any details as to the necessity of appointment of Advocate Commissioner in the affidavit, a Commissioner cannot be appointed by exercising power under Order XXVI Rule 9 of CPC. Hence, the order of the trial Court cannot be interfered with on this ground also. Though the reasoning given by the trial Court is otherwise, the revision is dismissed on the sole ground.

7. In the result, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand dismissed.

15th March, 2018

sj

M. SATYANARAYANA MURTHY, J

