

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

**C.R.P.No.7147 of 2017**

**ORDER:**

Heard the learned counsel for the petitioner.

2. This Civil Revision Petition is filed challenging the order dt.17-11-2017 in I.A.No.1146 of 2017 in O.S.No.57 of 2005 of the Senior Civil Judge, Puttur.

3. Petitioner is 10<sup>th</sup> defendant in the suit. She filed the application I.A.No.1146 of 2017 to issue witness summons for examination of Mandal Surveyor of Ramachandrapuram Mandal as Court Witness. In the affidavit filed in support of the application, it is stated that the petitioner had visited the suit schedule property and noticed that the entire property is not brought under cultivation and that except a small extent, the rest is like jungle. It is also contended that there are no sub-division stones in the middle of the property and that the suit schedule property is an extent of Ac.66.00 cts in Sy. No.90 of Rayalacheruvu Revenue village and is in one block.

4. Counter affidavit was filed by the defendant Nos.1 to 3 objecting to the same on the ground that the petitioner was trying to fill up the lacuna in the evidence of plaintiffs. It is also contended that this Court in C.R.P.No.272 of 2017 merely directed the Court below to receive certain documentary evidence and directed the suit to be disposed of within certain period. It was also pointed out that earlier,

an application filed by the plaintiffs under Order 26 Rule 9 CPC for appointment of Advocate Commissioner had been dismissed.

5. The Court below by order dt.17-11-2017 dismissed I.A.No.1146 of 2017. It took the view that the suit is one for declaration of rights of the plaintiffs and petitioner/10<sup>th</sup> defendant in deriving her rights from one of the plaintiffs, there is no necessity to summon the Mandal Surveyor.

6. Assailing the same, this Civil Revision Petition is filed.

7. Learned counsel for the petitioner sought to contend that the failure of the Court below to summon the Mandal Surveyor of Ramachandra Puram Mandal as a Court Witness causes serious prejudice to him and he ought not to be deprived of an opportunity to prove his case by examining the said Mandal Surveyor as a Court Witness.

8. Admittedly, the suit is for declaration of title and for a perpetual injunction.

9. Admittedly, respondent Nos.1 to 5/plaintiffs had earlier filed I.A.No.605 of 2008 under Order 26 Rule 9 CPC to appoint an Advocate Commissioner to localize the suit property taking the help of Mandal Surveyor, Ramachandra Puram Mandal and the same was dismissed on 10-09-2012, and though respondent Nos.1 to 5 questioned the same by way of Revision, it was dismissed even by this Court.

10. The petitioner herein got impleaded as 10<sup>th</sup> defendant in the suit in June 2016 and thereafter filed Written Statement. Additional issues were framed and she wanted to file certain documents. This was rejected by the trial Court on 29-11-2016 in I.A.No.1009 of 2016 in O.S.No.57 of 2005 by the Senior Civil Judge, Puttur.

11. Petitioner questioned the same before this Court in C.R.P.No.272 of 2017. The said Revision Petition was allowed on 07-04-2017 permitting the petitioner to mark the suit documents and directing disposal of the main suit itself within three months preferably. Long after three months period ended, in July 2017, the petitioner had filed I.A.No.1146 of 2017 to summon the Mandal Surveyor as a Court Witness.

12. As rightly held by the Court below, when I.A.No.605 of 2008 for appointment of Advocate Commissioner to localize the property with the help of Mandal Surveyor was itself dismissed and was confirmed by this Court, the question of summoning the Mandal Surveyor as a Court Witness would not arise. That apart in C.R.P.No.272 of 2017, there was only direction to the petitioner to produce certain documents and mark them and to dispose of the suit within three months and long afterwards, this application to summon the Mandal Surveyor was filed.

13. In my considered opinion, summoning Mandal Surveyor as a Court Witness to note the existence of crops in the property

cannot be of any help the petitioner when the main question of title and possession of the respondent Nos.1 to 5 is required to be decided in the suit on the basis of evidence adduced by parties.

14. I therefore see no reason to interfere with the order passed by the Court below.

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

16. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

Date: 22-01-2018  
kvr

**JUSTICE M.S.RAMACHANDRA RAO**

