

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

CRP.No.979 of 2019

O R D E R:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.20.03.2019 in I.A.No.90 of 2019 in O.S.No.191 of 2012 of the Senior Civil Judge, Nizamabad refusing to appoint an Advocate-Commissioner under Order XVI Rule 9 CPC to verify in which survey number the suit schedule property would fall, i.e. whether in survey No.1735 as is alleged by the petitioner, or in survey No.1737 as is alleged by the respondent, by taking assistance of a Mandal Surveyor and Village Map.

2. The reason for dismissal of the said application by the Court below is that there is a dispute about the possession.
3. When the suit of the petitioner itself is for recovery of possession, it is absurd to say that the possession is in dispute.
4. The second reason given by the Court below for dismissing the application is that the suit is posted for arguments and at that stage, appointment of an Advocate-Commissioner is not warranted. It also observed that there is no dispute regarding boundaries or physical features of properties or about the identity of the property.

5. The Supreme Court in ***Haryana Waqf Board v. Shanti Sarup and Others***¹ as well as this Court in ***Bandaru Mutyalu and Another v. Palli Appalaraju***² and also in an order passed by this Court on 14.03.2019 in CRP.No.5134 of 2018, has held that appointment of Advocate Commissioner would be warranted where there is a controversy as to identification and location or measurement of the land.

6. In the instant case, since there is a dispute as to the location of the suit schedule property, whether it is in survey No.1735 as is alleged by the petitioner, or in survey No.1737 as is alleged by the respondent, the Court below erred in dismissing the I.A.No.90 of 2019.

7. Therefore, this Civil Revision Petition is allowed; the order dt.20.03.2019 in I.A.No.90 of 2019 in O.S.No.191 of 2012 passed by the Senior Civil Judge, Nizamabad, is set aside; and the said I.A. is allowed. No order as to costs.

8. Consequently, miscellaneous petitions pending if any shall stand closed.

M.S. RAMACHANDRA RAO, J

22nd August, 2019.

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¹ 2008(8) SCC 671

² 2013(5) ALD 376