

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

CIVIL REVISION PETITION No.1609 OF 2018

ORDER:

This Revision is filed assailing order dt. 27.11.2017, in IA.No.137 of 2016 in OS.No.526 of 2010 of the Principal Junior Civil Judge, Kothagudem.

2. Petitioners herein are defendants 2 to 5 in the said suit.

3. The said suit was filed by the 1st respondent against the petitioners and the 2nd respondent for a perpetual injunction restraining the petitioners and the 2nd respondent from interfering with his alleged possession and enjoyment of the suit schedule property.

4. In the plaint, it is alleged that the subject land is agricultural land.

5. Written statement was filed by the petitioners contending that the plaint schedule property is not agricultural land and that the petitioners have been preparing bricks in the land and the land is full of pits.

6. Pending suit, the petitioners filed IA.No.137 of 2016 under Order 26 Rule 9 of Code of Civil Procedure, 1908, for appointment of an Advocate Commissioner to note down the physical features of the suit schedule property and to take photographs alleging that it is necessary to bring to the notice of the Court the nature of the land, i.e., whether it is agricultural land or non-agricultural land where bricks are being prepared, and it is necessary that the Court appoint

an Advocate Commissioner to note down the physical features and take photos.

7. Counter affidavit was filed by the 1st respondent opposing the said application denying the contentions of the petitioners. It is stated that in the main suit, the property was described as agricultural land, that defendants 3 & 4, who were also defendants in OS.No.285 of 2009 on the file of Principal Senior Civil Judge, Kothagudem, admitted that the lands are agricultural lands; taking advantage of recent changes in the suit schedule property, the petitioners want to get an Advocate Commissioner appointed; and that this would amount to collection of evidence in the guise of noting down of physical features. It is further contended that parties have to establish their respective case by adducing proper evidence and they cannot collect the evidence by appointing an Advocate Commissioner.

8. By order, dated 27.11.2017, the Court below dismissed the said application observing that the suit being one for injunction, the question involved in the suit is whether the 1st respondent/plaintiff was able to show his possession over the suit schedule property on the date of filing of the suit and the parties should confine themselves to the said aspect; and cannot seek appointment of Advocate Commissioner for noting down physical features and thereby try to collect evidence. The Court below declined to express any opinion as to whether the suit schedule property is part and parcel of OS.No.285 of 2009, but observed that in 2016, this application cannot be maintained.

9. Assailing the same, this Revision is filed.

10. Counsel for petitioner contended that there is no bar to appoint an Advocate Commissioner in suits for injunction for noting down physical features of the suit schedule property and it cannot be termed to be an attempt to collect evidence by one of the parties.

11. I agree with the said proposition of law, but in the instant case noting down the physical features of the property would result in the Advocate Commissioner noting down whether the land is agricultural land or used for making bricks, and would indirectly assist the petitioners to prove their possession of the suit schedule property; and, therefore, such clandestine attempt of the petitioners to collect evidence about their possession, cannot be permitted.

12. As rightly observed by the Court below, the issue in the suit is not about the nature of the property, but as to who is in possession of property on the date of filing of the suit, and appointment of Advocate Commissioner to decide possession of the property cannot be permitted.

13. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

14. Civil Revision Petition fails and is, accordingly, dismissed. No costs.

15. Miscellaneous petitions, if any, pending in this civil revision petition shall stand closed.

M.S.RAMACHANDRA RAO, J

Date: 7th March, 2019
KL

16

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**CIVIL REVISION PETITION No.1609 OF 2018**Date: 7th March, 2019

KL