

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.3405 of 2015

ORDER :

Heard both sides.

2. This Civil Revision Petition is filed challenging the order dt.08.10.2014 passed in Interlocutory Application No.207 of 2014 in Interlocutory Application No.696 of 2013 in Original Suit No.204 of 2013 on the file of Senior Civil Judge, at Sathupally.

3. The petitioners herein are defendant nos.2 and 3 in the above suit.

4. The respondent nos.1 and 2 filed the above suit against petitioners for a perpetual injunction restraining petitioners and 3rd respondent from interfering with their alleged peaceful possession and enjoyment over the suit schedule property.

5. According to respondent nos.1 and 2, they are the owners of the suit schedule property which is an extent of Acs.19.38 gunts (Dry) at Aswaraopet (Revenue) Village and Mandal, Khammam District; that they are in possession of the property from the date of their purchase on 22.02.1992 and 27.02.1992 through registered sale deeds; that they have title deeds and pattadar pass books also; that the patta shows their possession, and the 3rd respondent, who has land on the north of the said property, and petitioners who have land near the schedule property are trying to dispossess them from the suit schedule property.

6. Written Statement was filed by petitioners refuting the said contentions. They contended that respondent nos.1 and 2 have no title to the suit schedule property, and they are also not in possession thereof. They disputed the extent of the suit schedule property and stated that it is not Acs.19.38 guntas, but only Acs.15.00 guntas, that boundaries mentioned in the suit schedule property are also not correct, and they are raising oil palm trees in the land.

7. Pending suit, petitioners filed Interlocutory Application No.207 of 2014 to appoint an Advocate-Commissioner to record the physical features of the suit schedule property and file his reports. According to them, the suit schedule property is a palm oil garden belonging to petitioners, and the same requires to be noted.

8. Counter-affidavit was filed by respondent nos.1 and 2 opposing the said application and contending that there is no need to note down the physical features of the property since it is admittedly an agricultural land and it would amount to collection of evidence through an Advocate-Commissioner, if the said application is allowed.

9. By order dt.08.10.2014, the Court below dismissed the said application. It observed that it is for the respondent nos.1 and 2 to establish their possession over the suit schedule property during trial, and petitioners can cross-examine respondent nos.1 and 2 and other witnesses examined by respondent nos.1 and 2, and also adduce their own evidence. It also held that appointment of an Advocate-

Commissioner for noting down physical features would amount to gathering of evidence, and cannot be permitted.

10. Assailing the same, the present Civil Revision Petition is filed.

11. The counsel for petitioners contended that the order passed by the Court below is incorrect, and the Court below ought to have appointed an Advocate-Commissioner.

12. The counsel for respondent nos.1 and 2 refuted the said contentions and supported the order passed by the Court below.

13. In the instant case, there is no dispute as to the location of the property or about the measurement of property or allegation of encroachment by one party into the land belonging to the other. There is no necessity therefore for demarcating the property and that was not the request of petitioners also. They want an Advocate-Commissioner to note down the type of crop raised in the land, borewells, etc., which they claim that they have installed in the subject land. This would amount to clearly collection of evidence through an Advocate-Commissioner which cannot be permitted.

14. 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.

15. Accordingly, the Civil Revision Petition fails and it is dismissed. No order as to costs.

16. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10.07.2019

Ndr/*

