

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.1501 of 2016

ORDER :

This Revision is filed challenging the order dt.16-12-2015 passed in I.A.No.28 of 2015 in O.S.No.477 of 2010 of the Additional Senior Civil Judge at Kothagudem.

2. Petitioners are defendants in the said suit.

3. The said suit was filed by respondent against petitioners stating that he was a Civil Contractor, who was engaged under a contract dt.27-03-2009 for clearance of miscellaneous growth and up-rooting of stems existing in the cashew plantation in the year 2009 by petitioners in respect of 49 hectares; that after the agreement, the respondent commenced the work in the area shown by the subordinates of the 1st petitioner, which was recorded in the measurement book maintained by 3rd petitioner; but the respondent was made to clear the miscellaneous growth and up-rooting of stems in an extent of 74.5 hectares, which is more than what the contract provided for. The respondent stated that he did not carry out the contract work in an extent of 7 hectares, but for the balance 32.5 Hectares he is entitled to be paid charges by petitioners.

4. Written statement was filed by petitioners opposing the suit claim and disputing the claim of the respondent.

5. The respondent then filed I.A.No.28 of 2015 for appointment of an Advocate-Commissioner to measure the area shown in the work order with the assistance of Surveyor to determine the exact area in which the work was carried out by respondent.

6. In the affidavit filed in support of the said application, he contended that the work done by respondent was recorded incorrectly by petitioners as 42 Hectares only instead of 74.5 Hectares, that there is a dispute with regard to exact extent shown by petitioners in the work order and unless it is measured by the Surveyor, the dispute cannot be resolved.

7. Counter-affidavit was filed by petitioners opposing the said application stating that after lapse more than 6 years even if the Advocate-Commissioner is appointed, no useful purpose will be served and that the measurement work, if taken up now, will not be useful.

8. By order dt.16-12-2015, the Court below allowed the said application. It held that there is a dispute with regard to the area where the respondent had executed the contract work pursuant to the award of contract to him; for better appreciation of the case and adjudication of the matter, it is imperative to find out the exact extent of land in which the work was done by the respondent; and it can only be ascertained by appointing an Advocate-Commissioner to physically measure the area.

9. Challenging the same, this Revision is filed.

10. Heard the learned counsel for petitioners and learned counsel for respondent.

11. The application filed by respondent was to appoint an Advocate-Commissioner under Order XXVI Rule 9 C.P.C. to measure the area shown in the work order with the assistance of Surveyor to determine the exact area in which the work was carried out by respondent. While the respondent alleges he executed the contract for 74.5 Hectares, petitioners contend that he executed the contract work only for 42 Hectares.

12. The exact extent where the respondent had executed contract work can only be ascertained on the ground and it is a matter which cannot be proved by oral evidence.

13. Therefore, it cannot be said that there is any error of jurisdiction in the order passed by the Court below appointing the Advocate-Commissioner by taking the help from a qualified Surveyor. Of course, the petitioners would have an opportunity to file objections to the said report and also participate during the execution of the warrant by the Advocate-Commissioner and by the Surveyor, whose assistance will be taken by the Advocate-Commissioner.

14. Accordingly, this Civil Revision Petition fails and it is dismissed.

15. Interim order granted earlier is vacated. No costs.
16. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14-06-2019

Vsv

