

HONOURABLE SRI JUSTICE P. KESHA RAO

CIVIL REVISION PETITION No.2296 of 2019

ORDER:

Heard the learned counsel for the petitioner.

The present revision case is filed against the order dated 08.07.2019 passed in I.A.No.19 of 2019 in O.S.No.59 of 2013, dismissing the application filed under Order 26 Rule 9 C.P.C., for appointment of an advocate commissioner to record the evidence of the petitioner herein.

Pursuant to the orders passed by this Court on 05.11.2019, the notices taken out on respondent Nos.1 and 2 were served and proof of service is filed vide USR Nos.73621 and 67034 of 2019. In spite of service of notice, the respondents have not engaged any counsel nor filed any memo to appear as party in-person.

The case of the petitioner is that he filed a suit for injunction simplicitor seeking permanent injunction restraining the respondents from interfering with his peaceful possession over the suit schedule property, i.e., Sy.Nos.4 to 7 admeasuring Ac.6.26 guntas situated at Ippalapally Village, Kesampet Mandal, Mahaboobnagar District. During the pendency of the proceedings, the petitioner filed an application in I.A.No.19 of 2019 for appointment of advocate commissioner to record his evidence. In the affidavit filed in support of the application, the petitioner mentioned that he is

unwell and totally bedridden, and as such, he is not able to attend the Court.

Learned counsel for the petitioner would submit that though the medical certificate enclosed at page No.25 of the material papers of the present revision petition is made part of the record in the Court below, the same is not appreciated and without considering the same, the impugned order is passed.

Having heard the learned counsel for the petitioner and from a perusal of the said medical certificate, it is evident that the petitioner is suffering with Parkinson disease. If that be so, the petitioner has shown reasonable cause and proof in support of his submission that he was advised to take bed rest for Parkinson disease. Therefore, the observation made by the Court below that the petitioner has not filed any certificate about his health condition as on date is contrary to the record. When the petitioner is suffering with Parkinson disease and unable to move from the bed, it is not expected that he will come to Court and give evidence. On the other hand, if advocate commissioner is appointed for recording the evidence of the petitioner, no prejudice will be caused to the respondents since they have an opportunity to cross-examine the petitioner.

In these circumstances, this Court is of the opinion that the reasons shown by the petitioner for appointment of an advocate commissioner is reasonable and satisfactory.

Therefore, the order dated 08.07.2019 passed in I.A.No.19 of 2019 in O.S.No.59 of 2013 is set aside and an advocate commissioner is appointed for recording the evidence of the petitioner.

Accordingly, the civil revision petition is allowed.

Miscellaneous petitions, if any, shall stand disposed of.

P. KESHAVA RAO, J

Date: 24.01.2020.
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