

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

CRP.No.2309 of 2019

ORDER:

1. This Revision is filed under Article 227 of the Constitution of India challenging the order dt.25.02.2019 in IA.No.352 of 2017 in OS.No.1319 of 2017 of the VIII Junior Civil Judge, City Civil Court, Hyderabad.
2. Petitioners are plaintiffs in the above suit.
3. The said suit was filed by the petitioners against the respondents for a direction to the respondents to remove a tin shed, which is extended into the suit schedule property to an extent of 2.6 sq.ft in width and 30 feet in length along with iron scrap and granite stones, alleging that the respondents have encroached their property and erected the said tin shed and placed the said material.
4. Along with the suit, petitioners filed IA.No.352 of 2017 under Order XXVI Rule 9 CPC to appoint an Advocate Commissioner to note down the physical structure and submit a report as to the nature of encroachment/obstruction in the suit schedule property as on that day. They contend that the respondents had a malafide intention to grab the suit schedule property belonging to the petitioners and they put obstruction to the door and window by putting iron scrap and granite stones in the intervening night of 17/18-05-2017 and extended their tin shed towards the petitioners' house in the same night; that the

encroachment is to the extent of 2.6 feet in width and 30 feet in length and even though they were requested to remove the same, they misbehaved with the petitioners and did not remove the encroachment.

5. Counter affidavit was filed by the respondents opposing the said application and taking a plea that there is no unauthorized construction or encroachment, and the evidence cannot be permitted to be collected through the appointment of an Advocate Commissioner.

6. By order dt.25.02.2019 the Court below dismissed the said application agreeing with the contention of the respondents that an Advocate Commissioner cannot be appointed to assist the petitioners to collect evidence to establish their allegation.

7. Assailing the same, this Revision is filed.

8. Heard counsel for the petitioners and the counsel for the respondents.

9. Counsel for the petitioners has placed reliance on the judgments of this Court in ***Badana Mutyalu and another v. Palli Appalaraju***¹ and ***Jajula Koteswar Rao v. Ravulapalli Masthan Rao***².

10. In ***Badana Mutyalu***'s case(1 supra), after considering the decision of a Division Bench of this Court in ***Savitramma and***

¹ 2013(5) ALD 376

² 2015(6) ALD 483

another v. B.Changa Reddy³ and also the decisions of the Orissa High Court in **Mahendranath Parida v. Punanda Parida**⁴ and of the Madras High court in **Ponnusamy Pandaram v. The Salem Vaiyappamalai Jangamar Sangam**⁵, this Court has held that in situations where there is a controversy as to identification and location or measurement of the land, local investigation should be done at an early stage, so that the parties would be aware of the report of the Commissioner and go to the trial prepared.

11. In **Jajula Koteswar Rao**'s case (2 supra) also this Court reiterated the same relying upon the decision of the Supreme Court in **Haryana Waqf Board v. Shanti Sarup and others**⁶ that in cases where demarcation of a disputed land is warranted, it would be appropriate for the Court to direct investigation by appointing a local investigator under Order XXVI Rule 9 CPC. It also held that when there is an allegation of encroachment by one party, which is denied by another party, such a fact cannot be proved merely by oral evidence, and in such situations, appointment of an Advocate-Commissioner is warranted, since the evidence would be available only on the spot by its very nature and the Advocate Commissioner's report would assist the Court in coming to a just conclusion.

12. Therefore, I reject the contention of the respondents that appointing an Advocate-Commissioner in the facts and

³ 1988(1) ALT 353

⁴ AIR 1988 Ori.248

⁵ AIR 1986 Mad.33

⁶ 2008(8) SCC 671

circumstances of the instant case would amount to assisting the petitioners to collect evidence.

13. Accordingly, this Civil Revision Petition is allowed; the order dt.25.02.2019 in IA.No.352 of 2017 in OS.No.1319 of 2017 of the VIII Junior Civil Judge, City Civil Court, Hyderabad, is set aside and the said IA is allowed. No order as to costs.

14. Consequently, miscellaneous petitions pending if any shall stand dismissed.

M.S. RAMACHANDRA RAO, J

14th February, 2020.

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