

THE HON'BLE SRI JUSTICE A. VENKATESHWARA REDDY

Civil Revision Petition No.2489 of 2014

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India by the petitioner/plaintiff assailing the order dated 14.07.2014 in I.A.No.279 of 2014 in I.A.No.101 of 2014 in O.S.No.46 of 2014 on the file of the learned Senior Civil Judge at Nagarkurnool.

2. This application in I.A.No.279 of 2014 is filed under Order-XXVI, Rule-9 read with Section 151 of the Civil Procedure Code, 1908 (for short 'C.P.C.') by the defendants 1, 2, 4 & 5 for appointment of an Advocate Commissioner to note down the physical features existing over the suit schedule property. The trial Court has allowed the said application and appointed Advocate Commissioner to note down the physical features existing over the petition schedule property – land in Survey No.160/A to an extent of 30 guntas situated at Uyyalawada Village, Nagarkurnool Mandal and District. Feeling aggrieved by the said orders, the plaintiff has filed this civil revision petition.

3. Heard the learned counsel on both sides. The submissions made on either side have received due consideration of this Court.

4. The plaintiff has filed the original suit for perpetual injunction along with I.A.No.101 of 2014 for temporary injunction. During enquiry in the said I.A., the defendants have filed IA No.279 of 2014 for appointment of advocate commissioner to note down the physical features existing over the suit schedule property.

5. Order-XXVI, Rule-9 of C.P.C. deals with appointment of advocate commissioner and there is no specific bar for appointment of advocate commissioner in a suit for injunction simplicitor. In the case on hand, temporary injunction petition is pending, vide IA No.101 of 2014. In the course of enquiry in I.A.No.101 of 2014, the present I.A.No.279 of 2014 was filed by the defendants for appointment of advocate commissioner to note down the physical features of the suit schedule property.

6. The learned senior counsel for the petitioner/plaintiff seeks to submit that in a suit for bare injunction at this

pre-trial stage, the trial Court is not justified in appointing advocate commissioner to note down the physical features of the suit schedule property.

7. *Per contra*, the learned counsel for the respondents/defendants would submit that to bring quietus to the litigation, it is just and essential to appoint advocate commissioner and the trial Court has passed a well-reasoned order, it does not warrant any interference by this Court in exercise of the revisional jurisdiction.

8. Under Order-XXVI, Rule-9 of C.P.C., the Court is empowered to issue commissions *inter alia* for the purpose of elucidating any matter in dispute. It is the case of the plaintiff that he is the absolute owner of the suit schedule property and that on 02.03.2014 the defendants along with their supporters came to the suit land and tried to occupy the same. The plaintiff has mentioned the precise boundaries of suit schedule property in the schedule of property. Whereas, the claim of the defendants is that the land in Survey No.160 is converted from agricultural land to non-agricultural purpose and at the spot, marking

stones are fixed, several transactions took place by various registered sale deeds and different persons are in possession and it is just and essential to appoint advocate commissioner to localize the suit schedule property and also to note down the physical features.

9. This application in I.A.No.279 of 2014 is filed in the temporary injunction petition filed by the plaintiff, vide I.A.No.101 of 2014 and it was allowed. Assailing the same, this civil revision petition is filed and pending for the last more than eight years and as per the Case Status Information, the original suit is ripen for trial. Therefore, having regard to the peculiar facts of the case on hand, in my considered opinion, appointment of advocate commissioner in I.A.No.101 of 2014 at this stage in the original suit of the year 2014 is quite unwarranted. The trial Court shall proceed with the trial. As the issues are settled and the suit is being adjourned for trial since 14.08.2014 onwards, the trial Court is hereby directed to proceed with the trial and shall make every endeavour to dispose of the original suit within six months from the date

of receipt of copy of the order. However, in the course of trial, if it is felt essential either at the instance of any of the parties or the Court may on its own may appoint advocate commissioner to elucidate the matter in dispute to assist the court in arriving at a proper conclusion.

10. In the result, the Civil Revision Petition is allowed. The order impugned dated 14.07.2014 in I.A.No.279 of 2014 in I.A.No.101 of 2014 in O.S.No.46 of 2014 on the file of the learned Senior Civil Judge at Nagarkurnool, is hereby set aside. However, in the circumstances of the case, there shall be no order as to costs. The trial Court shall make every endeavour to dispose of the original suit within six (6) months from the date of receipt of copy of this order. Both the parties to the suit shall cooperate with the trial Court for expeditious disposal of the original suit, as directed.

As a sequel, interlocutory applications, if any pending, shall stand closed.

A. VENKATESHWARA REDDY, J.

Date: 17.10.2022
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