

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

SATURDAY, THE TWENTY NINTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

CIVIL REVISION PETITION NO: 1308 OF 2021

Petition under Article 227 of the Constitution of India aggrieved by the order dated. 18-04-2021 in IA NO. 408 OF 2020 IN O.S. No. 1075 OF 2020 on the file of the Court of the I- Additional Junior Civil Judge, at Warangal

Between:

1. Aedaboina Rajender Reddy, S/o. Krishna Reddy, aged about 58 years, Occ. Business, R/o. H.No. 1-7-1219, Road No.2, Advocate Colony, Hanamkonda, Warangal.
2. Aedaboina Kiran Reddy, S/o. A. Rajender Reddy, aged about 43 years, Occ. Business, R/o. H.No. 16-2-198, Karimabad, Warangal.
3. Smt. A.Anitha, W/o. K. Praveen Reddy, aged about 39 years, Occ. Household, R/o. H.No. 16-2-199, Karimabad, Warangal.
4. Mrs. A. Spandana, W/o.P. Satyanarayana Reddy, aged about 30 years, Occ. Housewife, R/o. H.No. 16-2-199, Karimabad, Warangal.
5. A. Shravya, W/o. Shashank Reddy, aged about 28 years, Occ. Housewife, R/o. H.No. 16-2-199, Karimabad, Warangal.
6. P. Laxmikanth Reddy, S/o. P. Surender Reddy, aged about 45 years, Occ. Business, R/o. H.No. 16-2-199, Karimabad, Warangal.
7. K. Meghana, D/o.K. Venkata Ramana Reddy, aged about 25 years, Occ. Student, R/o. H.No. 16-2-199, Karimabad, Warangal. (Petitioners No. 2,4 and 5 are represented by GPA holder Petitioner No. 1 Sri. A. Rajender Reddy and Petitioners No. 3,6 and7 are represented by GPA Holder Smt. A. Manohara, W/o. A. Basva Reddy, Aged about 60 years, Occ. Housewife, R/o. H.No. 2-5-855, Circuit House Road, Hanamkonda, Warangal.

Petitioners/Plaintiffs

AND

Bhuthapati Manohara, D/o. Late Titus, W/o. Williams Prahalad, aged about 62 years, Occ. Housewife, R/o. H.No. 1-3-157, Main Road, Kazipet, Warangal, Presently residing at 77/B, Bansilalpet, Bible House, Secunderabad.

Respondent/Plaintiffs

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to stay the operation of the Impugned order passed in IA NO. 408 OF 2020 IN OS. No. 1075 OF 2020, dated. 06-04-2021 on the file of the Honourable II- Additional Junior Civil Judge, Warangal.

For the Petitioners: K.V. BHANU PRASAD, Advocate

For the Respondent:

For the Respondent:

The Court made the following: ORDER

HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

C.R.P.NO.1308 of 2021

ORDER :

This Civil Revision Petition has been filed by respondents No.1 to 7 in I.A.No.408 of 2020 in O.S.No.1075 of 2020 on the file of II Addl. Junior Civil Judge, Warangal under Article 227 of Constitution of India, with a prayer to revise the order in the above Interlocutory Application, dated 04-04-2021 by which the Court below allowed the petition and appointed an Advocate Commissioner to demarcate the property shown in the suit schedule and to decide whether it is in Sy.No.79 of Kadipikonda Village, to note down the boundaries of suit schedule property.

2. As could be seen from the order of the Court below, the plaintiff in O.S.No.1075 of 2020, who filed the said suit for a perpetual injunction in respect of an open land to an extent of Ac.0-20 gts In Sy.No.79/A of Kadipikonda Village, filed a petition under Order 26 Rule 9 of Civil Procedure Code with a prayer to appoint an Advocate Commissioner for fixing the boundaries and to note down the physical features of suit schedule property with the assistance of the Assistant Land Surveyor, Land Records, Warangal. In support of the petition, the plaintiff has filed her own affidavit and submitted that she is absolute owner and possessor

of Ac.0-20 gts in Sy.No.79/A, Kadipikonda Village. She has filed a petition vide I.A.No.353 of 2020 under Order 39 Rules 1 & 2 of Civil Procedure Code and obtained an interim injunction. However, even after the said order, the respondents/defendants made hectic efforts to grab the property by showing wrong survey number, thereby, she sought for appointment of an Advocate Commissioner for fixing the boundaries and to note down the physical features of the suit schedule property.

3. The said application was opposed by the respondents/defendants i.e., the petitioners in the present revision on the ground that the respondent/plaintiff has no title, she has no possession over the suit schedule property. She made several applications before the Revenue Authorities for mutation of her name in the Revenue records, but the same is pending before the Tahsildar, Kazipet Mandal. The petitioners herein have also claimed that the land in Sy.No.162 and other land owned by A.Krishna Reddy are far away from the suit schedule property. The land claimed by the respondent/plaintiff to an extent of Ac.0-20 gts in Sy.No.79 or 79/A is not available on the spot. Number of super structures are raised by third parties in Sy.No.79/A, therefore, the description of the suit land i.e., open land is imaginary and falsely mentioned with oblique purpose, though there is no such land available for the petitioners. Thereby

the petitioners herein sought for dismissal of the application. However, the Court below vide the order impugned in the present revision directed appointment of an Advocate Commissioner for the purpose of demarcating the land in Sy.No.79 from land in Sy.No.162 of Somidi Village.

4. The present revision is filed on the ground that the Court below committed an error by appointing an Advocate Commissioner inspite of the fact that the main suit was filed by the respondent/plaintiff for a permanent injunction with definite boundaries, thereby, the Advocate Commissioner could not have been appointed for fixing the boundaries of the suit property. The petitioners have claimed that the petition filed by the petitioner/plaintiff is for the purpose of collecting evidence with the help of an Advocate Commissioner which cannot be permitted. It is settled law that an Advocate Commissioner cannot be appointed for the purpose of gathering the evidence. They have also claimed that the Court below failed to see that there is a vast distance between Sy.No.79/A of Kadipidonda Village and Sy.No.162 of Somidi Village. Therefore, Commissioner could not have been appointed for separating the said survey numbers. The petitioners have further pleaded that if the land claimed by the petitioner is not tallied with the land available in Sy.No.79, the proper course for the respondent was to file a suit for declaration but not the suit

for perpetual injunction. Therefore, they prayed for setting aside the order of the Court below.

5. Heard the learned counsel for the petitioner. Though a notice was served on the respondent/plaintiff, none represented the plaintiff.

6. The learned counsel for the petitioners has submitted that the appointment of Commissioner by the trial Court for demarcation of schedule property and to fix the boundaries is against the principles of law, it amounts to collection of evidence and the same is not permissible under law, thereby sought for setting aside the order.

7. Now the point for consideration is :

Whether the Court below committed an error in allowing I.A.No.408 of 2020 and directed appointment of an Advocate Commissioner for fixing the boundaries to suit schedule property?

8. As per the averments of the plaint, which is available in the records, it is quite clear that the respondent/plaintiff has filed O.S.No.1075 of 2020 for a perpetual injunction in respect of Ac.0-20 gts of open land in Sy.No.79/A of Kadipikonda Village within specific and fixed boundaries. According to the schedule annexed to the plaint, the above said Ac.0-20 gts of land is shown in the following boundaries.

EAST : Land in Sy.No.80 and Godown Road
WEST : House of Tahsildar
NORTH : FCI Godown Boundary and Somidi
village Boundary
SOUTH : 20 Ft CC Road

9. It also appears from the record that the respondent/plaintiff filed an Interlocutory Application under 39 Rules 1 & 2 and obtained an injunction against the petitioners herein.

10. As per the averments made in the affidavit filed in support of I.A.No.408 of 2020, the respondent/plaintiff has submitted that the petitioners herein made efforts to grab her property by showing wrong survey number, thereby she sought for appointment of an Advocate Commissioner to fix the boundaries to her land. It is settled law that in a suit for perpetual Injunction, it is for the plaintiff to prove possession over the suit property and the plaintiff cannot depend on the case of the defendants. It is also a fact that the Commissioner cannot be appointed for the purpose of collecting evidence. When the respondent/plaintiff filed a suit for perpetual injunction by showing an extent of Ac.0-20 gts within specific boundaries, she cannot claim appointment of an Advocate Commissioner for the purpose of fixing the suit property. Even if it is alleged by the defendants in the suit that they have

got title on a different property, and even if it is their case that there is no such open land is available, it is for the plaintiff to establish the existence of suit schedule property and availability of the same within the boundaries mentioned in the plaint schedule. It may be true that the petitioners herein filed a written statement claiming an extent of Ac.01-30 gts of land is in Sy.No.162 of Somidi Village, but on that ground, the responsibility of the plaintiff to prove the existence of suit schedule property cannot be shifted to the Advocate Commissioner by a direction to fix the property within a particular survey number or within particular boundaries.

11. While deciding the petition under Order 26 Rule 9 of Civil Procedure Code, the Court shall examine the suit claim, what was the contention of respondent. The suit is for perpetual injunction on the basis of possession on a specified property showing it in definite boundaries. The respondent/plaintiff filed the said Interlocutory Application for fixing the boundaries and note down the physical features of the suit property. But the trial Court appointed Commissioner to demarcate the property and identify whether the property is in Sy.No.79 of Kadipikonda or in Sy.No.162 of Somidi Village. If such a relief is ordered, it is nothing but deciding the dispute on the basis of report that will be filed by Commissioner even before the plaintiff produce his

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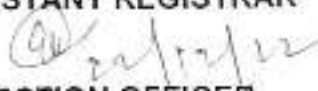
evidence. Therefore, the appointment of Commissioner is beyond the scope of suit.

12. Therefore, the Court below committed an error in appointment of Advocate Commissioner for fixation of the boundaries to the suit schedule property thereby, the order is liable to be set aside.

13. In the result, the C.R.P. is allowed. The Order of the Court below is set aside. No costs.

Consequently, Miscellaneous applications if any, are closed.

//TRUE COPY//

Sd/- K. AMMAJI
ASSISTANT REGISTRAR

SECTION OFFICER

To,

1. The I Additional Junior Civil Judge at Warangal, Warangal District.
1. One CC to SRI. K V BHANU PRASAD, Advocate [OPUC]
2. Two CD Copies



PR

HIGH COURT

SSRNJ

DATED:29/10/2022

ORDER

CRP.No.1308 of 2021



ALLOWING THE CRP WITHOUT COSTS.

③ VW
13/12/22