

THE HONOURABLE SRI JUSTICE SAMBASIVA RAO NAIDU

CIVIL REVISION PETITION NO.1870 OF 2022

ORDER :

Feeling aggrieved by the Order dated 24.06.2022 passed in I.A.No.577 of 2019 in O.S.No.294 of 2006 by learned Senior Civil Judge, Vikarabad, by which, the application filed by the petitioners under Order XXVI, Rule 9 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') was dismissed, the petitioners therein filed the present revision petition under Article 227 of the Constitution of India.

2. As could be seen from the material available on record, the revision petitioners filed a petition vide I.A.No.577/2019 before the Court below seeking appointment of an Advocate Commissioner to visit the schedule land admeasuring 300 Square yards in Survey No.134 of Allampalli Road, Vikarabad Municipality, and to note down the existing structures

therein, the said petition was dismissed by the trial Court.

3. In support of the petition filed before the trial Court, the petitioner/plaintiff No.4 has filed his affidavit with the following averments:

The petitioners/plaintiffs have instituted O.S.No. 294/2006 seeking for declaration of title and for perpetual injunction in respect of land admeasuring 300 Square yards in Survey No.134. The petitioners have claimed that they have purchased the property from the previous owners under private sale deeds (unregistered sale deeds) during the year 1965 and since then, they have been in possession of the schedule property as absolute owners. The petitioners further stated that the respondent/defendant No.1 i.e., District Co-operative Marketing Society Limited, took a plea that the schedule property is an open vacant plot but the petitioners have claimed that there are various structures existing over the schedule property since

1965. Therefore, to disprove the contention of the respondents/defendants, seeking to appoint an Advocate Commissioner to note down the existing structures over the schedule land.

4. The said petition was opposed by the respondents on the ground that since the suit is filed by the petitioners for perpetual injunction and for declaration of title, they have to prove their possession over the schedule property and that they cannot file a petition for appointment of an Advocate Commissioner to note down the physical features, since the collection of evidence through an Advocate Commissioner cannot be permitted.

5. The Court below having heard learned counsel for both the parties and also having verified the pleadings, came to the conclusion that the petitioners/plaintiffs have to prove their case on their own evidence and they cannot fish out the evidence by getting

appointment of an Advocate Commissioner. Thereby, the petition filed by the petitioners was dismissed.

6. The petitioners have filed the present revision on the following grounds:

The Court below ought to have allowed the application for appointment of an Advocate Commissioner to note down the physical features of the schedule property, in view of the specific plea taken by the respondents/defendants that there are no structures and the schedule property is a vacant land. The Court below ought to have seen that the petitioners have filed suit not only for perpetual injunction but also for declaration of title and that they have taken a specific plea that there are many structures in the schedule property and in view of the claim/plea taken by the petitioners that the appointment of an Advocate Commissioner is quite essential for better adjudication of the matter. The petitioners have claimed that there are shops and

other establishments in the schedule property for more than 40 years. Therefore, to have a clear idea about the nature of the schedule property, the appointment of an Advocate Commissioner is essential. As the Court below did not consider the request they prayed, this Court to set aside the impugned Order and appoint an Advocate Commissioner.

7. Heard learned counsel for the petitioners.

8. Learned counsel for the petitioners while placing reliance on the Order of this Court between ***FAIMIDA BEGUM AND ANOTHER v. SHAIK SAHBBAR AHMED AND OTHERS***¹, has argued that appointment of an Advocate Commissioner for surveying the schedule property to locate the property in a suit filed for perpetual injunction can be allowed and such an appointment is for just conclusion as to where the land is situated.

¹ 2021 (5) ALD 328 (TS)

9. According to the averments made in the petition, affidavit filed in support of the petition and also as per the plaint, it is quite clear that the petitioners having claim that they have purchased the schedule property, which is immovable property and a vacant land, under unregistered sale deeds, they sought declaration of their title and also for grant of perpetual injunction against the respondents/defendants. It may be true that the respondents took a plea that the schedule property is a vacant land. As per the material averments made in the affidavit and plaint, the petitioners/plaintiffs wanted to have appointment of an Advocate Commissioner to prove that they have established shops over the schedule property. As rightly contended by the respondents/defendants, when the petitioners/plaintiffs filed the suit for perpetual injunction and for declaration of title on the basis of unregistered documents, they are not supposed to collect the evidence through an Advocate

Commissioner and that they have to prove their claim only on the basis of oral or documentary evidence.

10. While so, the facts in ***FAIMIDA BEGUM v. SHAIK SAHBBAR AHMED*** referred to *supra*, on which the petitioners have placed reliance, are quite different from the facts of the present case on hand. In the referred Order, this Court while disposing the Civil Revision Petition held that appointment of an Advocate Commissioner is required to locate/identify the schedule property when there is a dispute with regard to location of the property to give a just conclusion where the lands of the respective parties are situated. Object of appointment of an Advocate Commissioner is to survey lands but not to ascertain or to cause any enquiry as to who is in possession of the schedule property. But here in this case, the petitioners wanted to show through the report of an Advocate Commissioner that they have been in possession of the schedule property by constructing some shops, which

amounts to collection of evidence, however, such exercise cannot be conducted by an Advocate Commissioner.

11. After meticulously analyzing the entire case on hand, I am of the considered opinion that the impugned Order of the Court below is on correct lines and it is sustainable under law, as such, the same cannot be interfered by exercising the jurisdiction of this Court under Article 227 of the Constitution of India. Accordingly, the Civil Revision Petition is liable to be dismissed.

12. In the result, the Civil Revision Petition is dismissed.

Pending miscellaneous petitions, if any, shall stand closed. No costs.

JUSTICE SAMBASIVA RAO NAIDU

DATED 15.12.2022

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