

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CIVIL REVISION PETITION No.2156 of 2022

ORDER:

This revision is filed aggrieved by the order dated 14.07.2022 passed in E.A.(S.R.) No.277(A) of 2022 in E.P.No.63 of 2019 in O.S.No.244 of 2012 on the file of the Additional Senior Civil Judge at Karimnagar.

2. The decree-holders, who are plaintiffs in the suit, have filed O.S.No.244 of 2012 for permanent injunction. The said suit was decreed on 20.08.2018. Thereafter, the decree-holders filed E.P.No.63 of 2019, wherein it is stated that the judgment-debtors are interfering and disturbing the suit schedule property and threatening to occupy the suit schedule property. The decree-holders gave a complaint to the police, but they have not taken any action as the dispute is a civil dispute suggested to go to the Civil Court.

3. A counter-affidavit has been filed by the judgment-debtors stating that they are not interfering in the suit schedule property and they have neither disturbed the boundaries nor threatened to occupy the suit schedule property at any point of time. Hence, the question of complaint to police does not arise. Basing on the decree of injunction passed by the Court, the decree-holders filed E.P. to harass the judgment-debtors. It is stated that earlier the decree-holders have filed a petition to appoint an Advocate Commissioner to measure the suit

schedule property. After due enquiry, the Court was pleased to dismiss the said petition on 30.04.2015. On such dismissal order, the decree-holders preferred C.R.P.No.3176 of 2015 and it was also dismissed. Further, the judgment-debtors i.e., petitioners herein have filed E.A.(S.R.) No.277(A) of 2022 for appointment of Advocate Commissioner stating that they are owners, pattadars and possessors of the total land to an extent of Ac.1.05 gts., in Sy.Nos.225/A and 226/A. In fact, the respondents/decreed-holders occupied the petitioners' land and trying to erect boundary stones pending E.P. with malafide intention.

4. Learned counsel for the respondents Sri P.Ramesh Babu submits that the Court below has passed an order dated 14.07.2022 stating that the petitioners filed I.A.No.753 of 2013 for appointment of Advocate Commissioner and the same was dismissed on 30.04.2015 and on which the petitioners/judgment-debtors herein preferred C.R.P.No.3176 of 2015 and it was also dismissed. Hence, the second petition for appointment of an Advocate Commissioner is not maintainable. Moreover, the respondents/decreed-holders filed E.P., at this stage again filed similar petition by the judgment-debtors. Hence, it is not maintainable, so returned. He submits that Court below has rightly dismissed the application.

5. Learned counsel for the petitioners Sri R.Lakshmi Narsimha Rao submits that earlier application is not filed by the judgment-debtors, it is filed by the decree-holders and the Court below, on a wrong assumption that the judgment-debtors have filed the application, has passed this order.

6. There is no dispute about the fact that earlier application seeking appointment of an Advocate Commissioner is filed by the decree-holders and when the same was dismissed a C.R.P. is filed and pending C.R.P., suit is decreed, as such, the said application has become infructuous. The Court below on a wrong assumption of facts and considering that the application is filed by the judgment-debtors hence returned as it is not maintainable.

7. It is the specific case of the judgment-debtors that under the guise of the E.P., the decree-holders are in fact interfering with their possession. He has relied on the order passed by this Court in **Chakka Ranga Rao v. Molla Mustari Banu**¹ and submits that at an stage application seeking appointment for an Advocate Commissioner is maintainable.

8. The impugned order reveals that the Court below on wrong appreciation of factual position that the earlier application that is filed by the judgment-debtors is dismissed and questioning that the C.R.P.No.3176 of 2015 is filed and the same was also dismissed and again the judgment-debtors are coming

¹ 2006 LawSuit (AP) 494

up the present application hence, the same was returned as not maintainable. In view of the fact that the said application is not filed by the judgment-debtors, but in fact filed by the decree-holders, this order under revision is liable to be set aside and the Court below shall consider the application i.e., E.A.(S.R.) No.277(A) of 2022 filed by the judgment-debtors on merits.

9. Accordingly, the civil revision petition is allowed setting aside the order dated 14.07.2022 passed in E.A.(S.R.) No.277(A) of 2022 in E.P.No.63 of 2019 in O.S.No.244 of 2012 on the file of the Additional Senior Civil Judge at Karimnagar. There shall be no order as to costs.

Miscellaneous applications, pending if any, shall stand closed.

February 08, 2023

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LALITHA KANNEGANTI, J