

**HON'BLE SRI JUSTICE A.SANTHOSH REDDY**

**C.R.P.No.1424 of 2017**

**ORDER:**

This petition is filed against order dated 21.12.2016 in I.A.No.449 of 2016 in I.A.No.26 of 2016 in O.S.No.3 of 2016 on the file of Principal Junior Civil Judge's Court at Sathupally.

2. Heard learned counsel for the petitioners and the learned counsel for the respondents. Perused the record.

3. The respondents-plaintiffs filed the main suit for permanent injunction restraining the petitioners-defendants from interfering with their peaceful possession and enjoyment over the suit schedule property. The respondents filed application in I.A.No.26 of 2016 for temporary injunction. In the said application, the respondents filed I.A.No.449 of 2016 under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (for short "CPC") for appointment of Advocate Commissioner to note down the physical features of the petition schedule property and the constructions thereunder and to take photographs of the same.

4. The petitioners resisted the same by filing counter affidavit.

5. On a consideration of the material on record, the trial Court allowed the said application by order under revision. Challenging the same, the present revision is filed.

6. At the hearing, learned counsel for the petitioners submits that the order of the trial Court virtually permitted the Advocate Commissioner to gather the evidence and that the said course of action is not permissible, more particularly, in a suit for permanent injunction. The trial Court committed error by passing the impugned order, as such, prayed to set aside the same.

7. Learned counsel for the respondents, while supporting the impugned order, submits that the trial Court has rightly appointed an Advocate Commissioner to note down the physical features of the petition schedule property and its boundaries. No prejudice would be caused to the case of the petitioners by allowing the said application. Therefore, he prays to dismiss the revision petition.

8. The object of Order XXVI Rule 9 of C.P.C. is not to assist a party to collect evidence, where the party can procure the same. An Advocate Commissioner can be appointed under XXVI Rule 9 of C.P.C. *inter alia* for 'elucidating any matter in dispute'.

9. In the instant case, the claim of the respondents for perpetual Injunction is based on the plea that they purchased the suit schedule property in the year 2002 and constructed a thatched house and running a cycle puncture shop. Subsequently, the State Government has granted an amount of Rs.25,000/- for construction of RCC building in the said site under Indiramma padhakam. Since the date of purchase, they have been in peaceful possession and enjoyment of the suit schedule property. The petitioners-defendants are trying to interfere with their possession and enjoyment over the suit schedule property.

10. The petitioners in their counter affidavit contended that the boundaries mentioned to the suit scheduled property are not correct, but they are admitting the construction therein. Therefore, the present application is filed to appoint an Advocate Commissioner to note down the physical features of the suit schedule property. The main dispute appears to be with regard to the boundaries and about the extent of the land between the parties. Therefore, a situation such as this would certainly fall within the expression of elucidating any matter in dispute. This may, in my

opinion, would not amount to gathering of evidence, it only assist the Court to ascertain with certainty as to the contentions raised by the respondents in the suit. Apart from this, I am of the view that by appointing an Advocate Commissioner to note down the physical features of the suit schedule property in no way cause any prejudice to the case of the petitioners and by inspection of the Advocate Commissioner and submission of the report, the real controversy can be more effectively and conveniently resolved.

11. In the light of the above, I do not find any reason to interfere with the order of the trial Court, as the same does not suffer from any infirmity or illegality.

12. In the result, the civil revision petition is dismissed. There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand closed.

A.SANTHOSH REDDY, J

31.01.2023

Nvl

