

THE HONOURABLE DR.JUSTICE G.RADHARANI

CIVIL REVISION PETITION NO.2992 of 2022

ORDER:

This Civil Revision Petition is filed by the petitioner – respondent – defendant aggrieved by the order dated 29.11.2022 in I.A.No.1498 of 2022 in I.A.No.287 of 2020 in O.S.No.173 of 2020 on the file of the Junior Civil Judge cum Judicial Magistrate of I Class, Huzurnagar.

2. The facts of the case in brief are that the respondent – plaintiff filed a suit for perpetual injunction along with I.A.No.287 of 2020 for grant of temporary injunction, claiming that she was the absolute owner and possessor of the residential house ground floor and first floor constructed with 28 x 37 feet in an extent of 238 Sq. yards including vacant site bearing door no.6-344/7 situated within the Gram Panchayat and revenue limits of Mattampally Revenue Village and Mandal, Suryapet District. She contended that it was her self-acquired property which was purchased vide registered sale deed No.170 of 2004, dated 05.02.2004 on the file of the Sub-Registrar, Huzurnagar. She stated that the defendant was her daughter-in-law, no way concerned with the suit schedule property. Taking advantage of her loneliness, the defendant was proclaiming that she would dispossess the plaintiff and occupy the same by force, hence,

filed the suit for perpetual injunction and the interim application for temporary injunction.

3. The defendant filed written statement stating that she was the wife of late Venkatadri. Late Venkatadri was the first son of the plaintiff and her husband by name Hanumanthu. The defendant married Venkatadri on 02.12.1999. On 05.02.2004, the joint family members including the defendant purchased the plot to an extent of 225 Sq. yards in block No.6 in Survey No.820 situated within the Gram Panchayat and revenue limits of Mattampally Village and Mandal from one Adireddy for a consideration of Rs.36,500/- and the same was registered in the name of the plaintiff. The joint family also purchased some other agricultural lands and other properties and registered in the name of the plaintiff for the welfare of the joint family. On 17.05.2013, the properties of the joint family were partitioned. As per the said partition deed, the ground floor of the schedule property was consisting of four (04) rooms (2 shutter rooms and 2 normal rooms). Out of those four (04) rooms, 1 shutter room and 1 normal room were allotted to the defendant's husband and the remaining two rooms were allotted to the second son of the plaintiff. The defendant's husband was given an extent of Ac.2-20gts. in Survey No.306/1, an extent of Ac.0-30gts. in Survey No.466, an extent of Ac.0-30gts. in Survey No.26 and an extent of Ac.0-20gts. in Survey No.509/AA1 and all the said lands were situated within the limits of Mattampally Village and Mandal and they were allotted equal

shares in the old house bearing Door No.4-129 situated in the Gram Panchayat limits of Mattampally Village and Mandal.

3.1. She contended that after partition of the joint family properties, the defendant's husband started a foot-wear business under the name and style of Harshitha Foot-Wear shop, registered the said business in the Gram Panchayat, Mattampally in the name of the defendant and was issued with the business license to run the said business. The second son, Ravi also started fertilizer business in his share of the said schedule property.

3.2. She further submitted that her husband passed away on 21.12.2014 due to ill-health and from then on, the plaintiff and other family members started harassing her. Due to their harassment, she started living in the room behind the shop with her daughter and making living on the foot-wear business that her late husband had started.

3.3. She contended that the plaintiff tried to occupy the properties of the defendant – respondent by force and she was able to restrain the plaintiff and other family members with the help of neighbours and village elders and prayed to dismiss the suit.

4. During the pendency of the suit, the defendant filed I.A.No.1498 of 2022 in I.A.No.287 of 2022 under Order 26 Rule 9 read with Section 151 CPC to

appoint an advocate commissioner to note down the physical features and to make local investigation in respect of the schedule property. She filed an affidavit in support of the petition stating that the plaintiff filed a false suit along with I.A. against her with wrong boundaries. With the active assistance of Gram Panchayat authorities, she created false documents in respect of the petition schedule property and was trying to obtain ad-interim injunction order from the court by suppressing the real facts. Since the possession of the plaintiff over the schedule property would not arise at all, to note down the physical features and to make local investigation in respect of the schedule property, the appointment of an advocate commissioner was very much required and prayed to allow the petition.

5. The respondent – plaintiff filed counter that she was in exclusive possession and enjoyment of the schedule property since long time. The issue of appointment of an advocate commissioner in respect of the schedule land might lead to further complications, the petition was filed only to drag the proceedings and prayed to dismiss the same.

5. The trial court on considering the pleadings of both the parties and on hearing the respective counsel on either side, observed that there was no dispute with regard to the boundaries, when the physical features of the schedule property were hardly of any relevance in a suit for permanent injunction, the

necessity to appoint an advocate commissioner would not arise and that an advocate commissioner could not be appointed for the purpose of collection of evidence and as the petitioner was seeking appointment of the advocate commissioner to know her possession in the schedule property, which was nothing but collecting evidence through the advocate commissioner, the same could not be permitted and by holding so, dismissed the petition.

6. Aggrieved by the said order, the petitioner – defendant filed this revision contending that the court below failed to note that the petitioner was seeking for appointment of an advocate commissioner only to establish the possession of the petitioner in the ground floor comprising of one shutter room and one ordinary room and which would not amount to collection of evidence, as the petitioner was not claiming any right other than the premises under her possession. If the possession of the petitioner was not established at the threshold of the said proceedings, it would become difficult for the petitioner to protect her lawful possession subsequent to the completion of evidence. The order and the revision were not legal and valid. If the possession of the petitioner over the petition schedule property was established, the real controversy involved would come to light and hence appointment of an advocate commissioner was very much essential for proper adjudication of the case and prayed to allow the Civil Revision Petition by setting aside the order dated 29.11.2022 in I.A.No.1498 of 2022 in I.A.No.287 of 2020 in O.S.No.173

of 2020 on the file of the Junior Civil Judge cum Judicial Magistrate of I Class, Huzurnagar.

7. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

8. As seen from the record, the suit is filed by the respondent – plaintiff seeking the relief of perpetual injunction.

9. In a case of injunction, it is for the plaintiff to establish her possession over the suit schedule property by producing cogent evidence before the court. The parties have to adduce evidence to prove their case. The parties cannot be allowed to collect evidence by seeking appointment of an advocate commissioner. Noting down the physical features of the property and making local investigation is not required in a suit for injunction. When the physical features of the schedule property are of no relevance, there was no necessity to appoint an advocate commissioner. An advocate commissioner cannot be appointed to prove as to who was in possession of the said property. It is the duty of the Court to come to a conclusion as to who was in possession of the property by the date of filing the suit, as per the evidence adduced by both the parties. Such duty cannot be relegated to an advocate commissioner. As such, this Court does not find any illegality in the order of the trial court in dismissing the petition.

10. In the result, the Civil Revision Petition is dismissed confirming the order of the Junior Civil Judge cum Judicial Magistrate of I Class, Huzurnagar in I.A.No.1498 of 2022 in I.A.No.287 of 2020 in O.S.No.173 of 2020 dated 29.11.2022 in dismissing the petition.

Miscellaneous applications pending, if any, shall stand closed.

Dr. G.RADHA RANI, J

14th February, 2023
nsk.

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