

THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION NO.670 OF 2023

ORDER:

The present Revision Petition is filed by the petitioners aggrieved by Order, dated 20.02.2023 in I.A.No.581 of 2022 in O.S.No.295 of 2019, on the file of the I Additional Junior Civil Judge at Machilipatnam, Krishna District.

2. The petitioners herein are the defendants and the respondent herein is the plaintiff in O.S.No.295 of 2019, which was filed for permanent injunction.

In the said Suit, Interlocutory Application No.581 of 2022 has been filed by the defendants under Order 26 Rules 9 and 10 and Sections 75 and 151 of the Code of Civil Procedure, praying the Court below to appoint an Advocate Commissioner to identify the suit schedule property, to note down the adjacent boundary holders' names, variety of the paddy that is in cultivation in the schedule property, to admeasure the property as shown by the plaintiff and to give a detailed report with the assistance of the Mandal surveyor, to the Court.

The said Application has been filed on the ground that the plaintiff filed the suit with all false averments stating that her father, during his life time, initially purchased an extent of Ac.1.17 cents and thereafter Ac.0.60 cents from Julluri Vana Venkata Nageswara Rao and on receiving consideration, the said person executed a hand letter in favour of the petitioner's father and delivered possession of the suit scheduled property, which is a single plot with specific boundaries and paying land revenue for the said land. Further, it is stated that the plaintiff was never in possession of the said land and never cultivated the same and with fraudulent intention, the present Suit has been filed.

Opposing the said application, the plaintiff filed counter, on the ground that the present Application for appointment of Advocate Commissioner is not maintainable as it amounts to collection of evidence, which is not appropriate and prayed to dismiss the Application.

After hearing both sides, the said Application was dismissed by the Court. Aggrieved by the same, the present Revision is filed.

3. Heard Sri Sai Gangadhar Chamarty, learned counsel for the petitioners.

4. Learned Counsel for the Petitioners, in elaboration to what has been stated in the grounds contended that, the Court below failed to see the purport of Order 26 and Rules 9 and 10 of the Code of Civil Procedure, in right perspective and without giving proper reasons, except stating that appoint of Advocate Commissioner is nothing but gathering of evidence and it is for the plaintiff to prove her case, erroneously dismissed the Application.

It is further contended that, in the cross examination of the plaintiff, she has categorically stated that she does not know whether there are boundaries to the suit scheduled property and also does not know the existence of boundaries. She also stated that she has not physically verified the boundaries and she also does not know the names of the surrounding farmers of the plaintiff schedule property. The said cross-examination is placed on record and has drawn the attention of this Court to the same.

It is further contended that, as there is dispute with regard to the boundaries, if an Application for appointment of Advocate Commissioner is allowed, truth will come out and this would aid the Court for better adjudication of suit and further, no prejudice will be caused to the respondent/plaintiff. The Court below, without looking into the above aspects has simply dismissed the said Application. As such, prayed to consider the Revision.

5. Perused the record.

6. The Suit vide O.S.No.295 of 2019 has been filed by the Plaintiff, on the file of Principal Junior Civil Judge at Machilipatnam, for permanent injunction.

The present Application has been filed by the defendants for appointment of an Advocate Commissioner and the said Application was dismissed by the court below. The defendants, while seeking for appointment of Advocate Commissioner, pleaded that as admitted by the plaintiff in her cross-examination, she is not aware of the boundaries of the suit scheduled property and she also is not aware of the existence of the boundaries.

The court below, while dismissing the Application has categorically given a finding that it is settled principle of law that an Advocate Commissioner cannot be appointed for collection of evidence by noting down boundaries. It is for the plaintiff to prove her case, when the relief in the suit is for permanent injunction. Therefore, the Court below has rightly dismissed the Application. The plaintiff's admission in her cross- examination that she is not aware of boundaries of the plaint scheduled property, will not automatically give entitlement to the defendants to pray for appointment of an Advocate

Commissioner, as it is always the plaintiff who has to prove her case, in a Suit for permanent injunction.

8. In view of the above observations, this Court does not find any illegality or impropriety and further, no valid grounds are raised or urged by the petitioners/defendants, warranting interference of this Court.

Accordingly, the Revision Petition is **dismissed**.

There shall be no order as to costs.

Miscellaneous Applications, pending if any, shall stand closed.

JUSTICE RAVI CHEEMALAPATI

17th March, 2023.

GBS/SCH