

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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CIVIL REVISION PETITION No.4063 OF 2015

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ORDER:

This revision petition is filed under Article 227 of the Constitution of India to set aside the dismissal order passed in I.A.No.121 of 2015 in O.S.No.11 of 2004 (O.S.Nos.417 of 2005, 389 of 2005, 425 of 2005 and 295 of 2004, which are clubbed with the Suit O.S.No.11 of 2004), dated 13.07.2015.

2. The Revision petitioner was the petitioner before the trial court, filed petition under Order XXVI Rule 9 of Civil Procedure Code to appoint advocate commissioner for limited purpose to note down the physical features of the schedule property by the commissioner. On that ground, the respondent herein, being the defendant in O.S.No.11 of 2004 raised several inconsistent pleas with regard to the portion in his possession and pointed out those inconsistent pleas in Para 3 of the affidavit while drawing the attention of the trial court to the contents of written statements filed in different suits. In view of inconsistent pleas raised by the defendant in O.S.No.11 of 2004, the physical features of the schedule property are germane to decide the real controversy between the parties by the trial court, therefore, sought for appointment of advocate commissioner for the aforesaid purpose.

3. The respondent filed counter that a commissioner cannot be appointed for the purpose of collecting evidence, since, physical features are not in dispute and prayed to dismiss the petition.

4. The trial court upon hearing argument of both counsel, dismissed the petition on the ground that petition is filed only to collect evidence, since, physical features are not in dispute.

5. Aggrieved by the order and decretal order passed by the trial court, the present petition is filed under various grounds almost reiterating the grounds urged before the trial court including inconsistency in the pleas raised by the respondent in

various suits being the defendant and that the report of the commissioner would be helpful to the trial court to decide real controversy. But the trial court did not take into consideration, the various inconsistencies pointed out by the petitioner in the affidavit filed before trial court along with this petition and committed an error.

6. At the stage of admission, the learned counsel Sri Shafath Ahmed Khan, while reiterating the above contentions, drawn the attention of various inconsistencies in the written statements filed by the respondent herein, referred various suits above, fairly conceded that there is no dispute regarding the physical features, but they are necessary for deciding the controversy between the parties and report of the commissioner would be helpful for the trial court to decide various issues involved in the suits referred above and prayed to allow the revision petition, set aside the order and decretal order passed by the trial court and appoint an advocate commissioner.

7. Considering the contentions of the petitioner, the point that arises for consideration is:

Whether the trial Court failed to exercise discretion which is conferred on it or exceeded the discretion in passing the order under Order XXVI Rule 9 of Civil Procedure Code, if so, whether the order passed by the trial court is liable to be set aside?

8. Before proceeding to the real controversy between the petitioner and the respondent, based on material, I feel that it is appropriate to advert to Article 227 of the Constitution of India, so as to limit the decision in this petition to the grounds available under Article 227 of the Constitution, which reads as under:

(1) Every High Court shall have superintendence over all courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may—

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts.

(3) The High Court may also settle tables of fees to be allowed to the

sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tables settled under Clause (2) or Clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or Tribunal constituted by or under any law relating to Armed Forces.

9. A bare look at Article 227 of the Constitution, it is clear that the powers of the High Court are limited and they are supervisory in nature. In one of the judgments of the Apex Court in **Essen Deinki v. Rajiv Kumar**, discussed about the jurisdiction of the High Court under Article 227 of the Constitution, held that the jurisdiction of the Court under Article 227 of the Constitution is limited and restrictive in nature, revisional and not appellate and finding of fact cannot be gone into normally. Generally speaking, exercise of jurisdiction under Article 227 of the Constitution is limited and restrictive in nature and it is so exercised in the normal circumstances for want of jurisdiction, errors of law, perverse findings and gross violation of principles of natural justice, to name a few. It is merely a revisional jurisdiction and does not confer an unlimited authority or prerogative to correct all orders or even wrong decisions made within the limits of the jurisdiction of the Courts below. The finding of fact being within the domain of the inferior Tribunal, except where it is a perverse recording thereof, or not based on any material whatsoever resulting in manifest injustice, interference under the Article is not called for. Therefore, the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate Courts or Tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority.

10. In another judgment of the Apex Court in **Nibaram Chandra Bag v. Mahendra Nath Ghughu**, it is ruled that the Court has been rather categorical in recording finding that the jurisdiction so conferred is by no means appellate in nature for correcting errors in the decision of the subordinate Courts or Tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority. In view of law declared by the Apex Court in the two judgments referred above, the powers of the High Court under Article 227 of the Constitution are limited.

11. In view of the powers under Article 227 of the Constitution, the High Court can

exercise a limited power of superintendence, moreover, the factual findings cannot be interfered, unless, the court satisfied that the trial court exceeded its discretion, which is conferred on it or failed to exercise the discretion which is conferred on it.

12. Coming to the facts of the present case, there are number of suits between the petitioner and respondent, which I referred in the earlier Paras and in view of undisputed fact that the physical features of the property is not in dispute, the question of appointing a commissioner to note down physical features is unnecessary for deciding the controversy. If for any reason, physical features of the property is in dispute and physical features are relevant for deciding the controversy between the parties, there is some justification in seeking appointment of an advocate commissioner under Order XXVI Rule 9 of Civil Procedure Code. When the physical features are not in dispute, need to appoint advocate commissioner for the above purpose does not arise.

13. The trial court observed that appointment of an advocate commissioner is to collect evidence. Since the respondent is claiming possession of part of the property, whether the respondent is in possession of any part of the property is to be established by adducing evidence. For establishing unlawful possession of the respondent, advocate commissioner cannot be appointed, since, it amounts to collection of evidence as rightly observed by the trial court. Therefore, on close scrutiny of entire order under challenge, I find that the trial court had neither failed to exercise the discretion conferred on it nor exercised the discretion, which is not conferred on it, warranting interference of this court by exercising powers of Superintendence under Article 227 of the Constitution.

14. In view of the limited jurisdiction of the High Court under Article 227 of the Constitution, I find that it is not a fit case to interfere with the order passed by the trial court, as I find the trial court did commit no error in dismissing the petition filed under Order XXVI Rule 9 of Civil Procedure Code to appoint advocate commissioner. Hence, the point is held against the petitioner and in favour of the respondent.

15. In view of my foregoing discussion, it is not a fit case calling interference of this court, exercising the powers under Article 227 of the Constitution and the petition is deserves to be dismissed.

16. Hence, the petition is dismissed at the stage of admission. Miscellaneous

petitions, if any, pending in this petition shall stand closed. No costs.

M.SATYANARAYANA MURTHY, J

Date: 01.10.2015

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