

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2874 of 2015

ORDER:

This revision petition is filed under Section 115 of the Code of Civil Procedure, 1908 (for short, 'C.P.C') challenging the order, dated 29.06.2015, in I.A.No.476 of 2015 in A.S.No.24 of 2012 passed by the VII Additional District Judge, Nizamabad.

2. The ranks given to the parties in I.A.No.476 of 2015 in A.S.No.24 of 2012 before the Court below will be adopted throughout the order.

3. The petitioner is the appellant/plaintiff, filed O.S.No.96 of 2005 for declaration and for recovery of possession as the 1st respondent/1st defendant constructed a wall by encroaching 5 feet portion at the stair case and 4 feet on the other side of the wall and removed one step of his stair case against the terms of compromise decree passed by the Senior Civil Judge, Nizamabad in O.S.No.56 of 1980, due to which the doors and windows of the petitioner are blocked. The trial Court, after considering the oral and documentary evidence on record, dismissed the suit. Challenging the same, the appeal A.S.No.24 of 2012 is filed. During pendency of the said appeal, the petitioner filed Interlocutory application under Order XXVI Rule 9 C.P.C., to appoint an Advocate commissioner to inspect the suit property and to note down the physical features.

4. The respondents filed counter, denying the material allegations, contending that in the earlier suit O.S.No.57 of 1998 filed by the petitioner, commissioner was appointed, who filed his report and marked as Ex.C1, and the commissioner was also examined as P.W.3. Therefore, the present petition is filed only to drag on the proceedings and hence, he prayed to dismiss the petition.

5. The Court below, after hearing the argument of both the counsel, concluded that in view of appointment of advocate commissioner in O.S.No.57 of 1998, the commissioner is not required to be appointed in the present case and copy of judgment in O.S.No.57 of 1998 was already marked as Ex.A.7 and accordingly, dismissed the petition.

6. Challenging the same, the present revision is filed on various grounds, mainly contending that the trial Court committed an error in dismissing the petition since report of the commissioner is helpful in a suit of comprehensive in nature and mere filing of copy of judgment in O.S.No.57 of 1998 and marking the same as Ex.A.7, is not sufficient; and that appointment of advocate commissioner in the suit O.S.No.57 of 1998, which was filed for bare injunction, would not serve any purpose and hence, he prayed to set aside the order passed by the trial Court.

7. Learned counsel for the respondents contended that earlier in S.A.No.699 of 1994 filed against the decree and judgment, dated 23.11.1992, in O.S.No.39 of 1984, this Court had issued certain directions for reconstruction of boundary wall and he also drawn the attention of this Court to the terms of compromise entered in I.A.No.60 of 1983 in O.S.No.56 of 1980 at page 4 of para 10, which reads as follows:

“That it is agreed that construction of wall shall be affected by defendants No.8 and 9 in between their two portions abutting the stair-case starting from the corner of the stair-case and ending at the corner of the last room of the portion of defendant No.8”

Therefore, the present appeal is free from any irregularities and illegalities and does not call for interference by this Court and hence, he prayed to dismiss the petition.

8. This revision is filed under Section 115 C.P.C. and the scope of the revision is very limited. The High Court may exercise its jurisdiction only when the subordinate Courts appear to have exercised the jurisdiction not vested in law or to have failed to exercise the jurisdiction so vested or to have acted in exercise of its jurisdiction illegal or with material irregularity.

9. The revisional jurisdiction casts the responsibility on higher forum to keep the subordinate judiciary within its limits, whereas the appellate jurisdiction needs the aggrieved party to complain to the higher forum. Therefore, the scope of revision under Section 115 C.P.C. is very limited.

10. The only contention of the petitioner is that appointment of advocate commissioner is necessary to note down the physical features and to ascertain

the actual land encroached.

11. Under Order XXVI Rule 9 C.P.C., a commissioner can be appointed for local inspection, which includes noting down the physical features of the property. In the present case, the physical features of the property are not in dispute. The dispute is only with regard to the extent trespass or occupation by the respondents. In fact, in the plaint itself the petitioner claimed declaration of title and for recovery of possession of certain extent, which allegedly encroached by the respondents. When the petitioner is certain about the extent of land encroached by the respondents, the question of appointment of an advocate commissioner to ascertain the actual extent encroached by the respondents is unnecessary. Even according to the allegations made in the affidavit filed along with the petition, the purpose of appointment of commissioner is only to note down the physical features of the property, but, the physical features of the property are not germane for decision in the main suit. Moreover, the present petition is filed only to fill up the lacunae in view of the observation made by the trial Court while dismissing the suit O.S.No.96 of 2005 filed for declaration and for recovery of possession. Therefore, the trial Court did not exceed its limits of jurisdiction or deny to exercise its discretion which vested on it to enable the Courts to exercise the power of review under Section 115 C.P.C. The observations made in S.A.No.699 of 1994 and the terms of compromise in I.A.No.60 of 1983 in O.S.No.56 of 1980 will have no bearing on the issue involved in this case and the respondents can file those documents before the trial Court, if necessary.

12. Basing on the material available on record, I find no irregularity or illegality committed by the trial Court while dismissing the petition warranting interference of this Court by exercising the power under Section 115 C.P.C. Hence, I find no ground to interfere with the finding of the trial Court.

13. Accordingly, the Civil Revision Petition is dismissed at the stage of admission. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M.SATYANARAYANA MURTHY, J

SEPTEMBER 01, 2015
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THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Dt: 01.09.2015

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