

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.2370 of 2014

Date: 12.03.2015

Between:

Vedaprakash Agarwal,
Hanamkonda,
Warangal District

.... Petitioner

And

Smt. Sangeeth Agarwal,
Hanamkonda and others

... Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No. 2370 of 2014

ORDER:

The second defendant in O.S.No.67 of 2011 on the file of the learned IV Additional District Judge (FTC), Warangal, is the petitioner. He is aggrieved by the order dated 30.06.2014 passed by the Court below in I.A.No.202 of 2013 filed in the suit for appointment of an Advocate Commissioner to note down the physical features of the entire suit schedule property, to obtain photographs, to note down the names of the occupants, to note down the nature of possession and other particulars. By the order under revision, the Court below allowed the I.A and appointed an Advocate Commissioner to inspect the suit schedule properties, take photographs wherever necessary, note the names of the occupants of the schedule properties and the nature of their possession. The fee of the Advocate Commissioner was to be paid by the plaintiffs in the suit.

Sri Podila Hari Prasad, learned counsel representing Sri Pamulaparty Sadasiva Rao, learned counsel for the petitioner/second defendant, contended that the appointment of the Advocate Commissioner was not warranted in terms of Order XXVI Rule 9 C.P.C., as the occupation of the schedule properties by various persons was not in dispute. He pointed out that the fourth item of the suit schedule was a commercial complex which was in possession of the tenants of the defendants and that the tenants ought not to be disturbed at the behest of the plaintiffs. He further pointed out that items 1 and 2 of the suit schedule were house properties, while the third item was an open land.

Perusal of the order under revision however reflects that the

plaintiffs, having filed the suit for partition of the suit schedule properties, claimed that the defendants were trying to change the physical features of some of the said properties and were also trying to alienate them according to their own whims and fancies. The defendants in the suit however contested the I.A by alleging that a prior partition had taken place between the husband of the first plaintiff and the remaining members of the joint family on 08.05.1992 and that the question of a further partition did not arise. As rightly pointed out by the Court below, this issue would necessarily have to be addressed in the main suit and was of no relevance for the purpose of the subject I.A.

It may be noticed that the provisions of Order XXVI Rule 9 C.P.C permit the Court to undertake a local investigation through a Commissioner for the purpose of elucidating any matter in dispute.

In the present case, as the suit for partition arose amongst the members of the same family and the apprehension voiced by the plaintiffs was that the physical features of the suit schedule properties would either be changed or alienation thereof would take place, it was necessary for the Court below to identify the properties as they stood, including ascertaining the identity of the persons in possession thereof so as to obviate such apprehension becoming a reality. It was for this purpose that the Court below allowed the I.A and appointed an Advocate Commissioner.

The Advocate Commissioner would be an Officer of the Court and the petitioner/second defendant cannot claim that the visit by such Commissioner would be inconveniencing or troublesome for the tenants in the premises. They are bound to co-operate with the Officer deputed by the Court to undertake the commission.

As the petitioner/second defendant is not in a position to demonstrate before this Court as to how he has any real grievance with regard to the order under revision, this Court is not inclined to interfere in the matter.

The Civil Revision Petition is devoid of merit and the same is accordingly dismissed.

Pending Miscellaneous Petitions, if any, shall also stand dismissed. No costs.

SANJAY KUMAR, J

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