

THE HON'BLE SRI JUSTICE K.C. BHANU

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CIVIL REVISION PETITION No.234 OF 2015

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is directed against the Order and decree, dated 31.12.2014, in Interlocutory Application No.598 of 2014 in Original Suit No.113 of 2010 passed by the Principal Junior Civil Judge, Gurazala, whereunder and whereby, an application filed under XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') for appointment of the Advocate Commissioner to note down the physical features and also constructions, if any, made in the plaint schedule property was dismissed.

2. Revision Petitioner is defendant No.3 in the suit. The suit was filed by the plaintiffs for permanent injunction restraining the defendants and their men from interfering with the peaceful possession and enjoyment of the suit schedule property. The evidence of plaintiffs was completed and the suit was posted for defendants' evidence. At that stage, the present application was filed.

3. Heard.

4. As seen from the impugned order, several adjournments were taken by the defendants to adduce their evidence and without adducing their evidence, filed the present application, which appears to have been filed only to drag on the proceedings.

5. There cannot be any dispute that under Order XXVI Rule 9 CPC, a Commissioner can be appointed to note down the physical features of the property so as to preserve the same pending

disposal of the suit.

6. There is no dispute about identity of the said property. Since it is a suit for mere injunction, question of noting down the physical features may not be necessary and relevant for the purpose of deciding the issue involved in the suit. The only ground taken in the affidavit filed in support of the petition for appointment of the Advocate Commissioner is to note down the constructions made in the petition schedule property. Law is well settled that a Commissioner cannot be appointed to collect the evidence. The purpose for which the petition filed appears to be to collect the evidence as to who made constructions in the petition schedule property, which is not permissible under law. Therefore, the petition is totally devoid of merit and the same is liable to be dismissed.

7. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this revision shall stand closed.

JUSTICE K.C. BHANU

Date:20.02.2015
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