

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No.2003 of 2014

ORDER:

The plaintiff in O.S.No.190 of 2011 on the file of the Court of the Principal Junior Civil Judge, Jagtial is the petitioner in the present revision, filed under Article 227 of Constitution of India. This revision assails the order dated 09.06.2014 passed by the learned Judge, rejecting I.A.No.102 of 2014 filed by the petitioner under the provisions of Order XXVI Rule 9 r/w Section 151 CPC.

Heard Sri E.V.V.S. Ravi Kumar, learned counsel for the petitioner and Sri D.Pochaiah, learned counsel for the respondents apart from perusing the material available on record.

The petitioner herein filed O.S.No.190 of 2011 against the respondents herein for declaration of title and also for perpetual injunction in respect of the plaint schedule land of Ac.0.14 guntas situated in survey No.401 of Anantharam Village of Jagtial Mandal, Karimnagar District. Resisting the said suit, the respondents herein filed a written statement. In the said suit, the plaintiff/petitioner herein filed the instant I.A.No.102 of 2014 under Order XXVI Rule 9 r/w Section 151 CPC, seeking appointment of Advocate Commissioner for local investigation for the purpose of determination of boundary line in between survey Nos.400 and 401 of Anantharam Village of Jagtial Mandal and to fix the boundary for Ac.0.03 guntas of land in survey No.401 on the eastern side of survey No.400, with the help of Mandal Surveyor, Jagtial. The learned Principal Junior Civil Judge, Jagtial by way of an order dated 09.06.2014, dismissed the said application.

Calling in question the validity and legal acceptability of the said order, the present revision has been filed by the plaintiff.

It is contended by the learned counsel for the petitioner that the

order passed by the Court below which is impugned in the present revision is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Order XXVI Rule 9 r/w Section 151 CPC. It is further submitted that if an Advocate Commissioner is appointed as sought by the petitioner herein, there can be finality for the issue in the suit. It is further submitted that the learned Judge ought to have allowed the application, as the respondents herein did not choose to file any counter, opposing the application. It is further contended that had the contents of affidavit filed in support of the application been taken into consideration by the learned Judge, the order under challenge would not have emanated.

Per contra, the learned counsel for the respondents contends that the order under challenge is in accordance with law and there is no illegality nor any material infirmity in the impugned order, as such, the present revision is not maintainable and the petitioner is not entitled for any relief.

Now the question that emerges for consideration is whether the order impugned in the present revision is sustainable and tenable?

A perusal of the material available on record manifestly discloses that in respect of the land, admeasuring Ac.0.14 guntas of land situated in survey No.401 of Anantharam Village of Jagtial Mandal, Karimnagar District, the petitioner herein instituted the suit for declaration and also for perpetual injunction. Resisting the said suit, the respondents herein filed a written statement. The plaintiff/petitioner herein, when the matter was posted for his further evidence, filed the present application in I.A.No.102 of 2014 under the provisions of Order XXVI Rule 9 r/w Section 151 CPC, seeking appointment of Advocate Commissioner for local investigation for the purpose of determination of boundary line in between survey Nos.400 and 401 and for fixation of boundary for Ac.0.03 guntas in survey No.401 on the eastern side of survey No.400, with the help of Mandal Surveyor, Jagtial. A perusal of

the order passed by the learned Judge clearly and categorically discloses that the learned Judge thoroughly and meticulously considered the entire material available on record and rejected the request of the petitioner herein for appointment of Commissioner. In the impugned order, the learned Judge categorically recorded a finding that identification of Ac.0.03 guntas of land donated by the plaintiff/petitioner herein is not the crux of the present case, and even if the commissioner is appointed for locating the said land, the issue in the present suit cannot be decided at all. The learned Judge also categorically held that the demarcation of boundary line of land in survey No.400 is also not at all the subject matter in the present suit and the petitioner shall prove her claim basing on documentary evidence and the petitioner herein cannot rely upon others lands or documents. The learned Judge also found that the petitioner is not specific with regard to location of her suit land of Ac.0.14 guntas, and only seeking demarcation and identification of said land through Commissioner and that the same would tantamount to collection of evidence, which is impermissible as per the settled law. The said findings recorded by the Court below, in the considered opinion of this Court, are sound and reasonable. It is a settled and established proposition of law, that unless the order impugned suffers from jurisdictional infirmity, the jurisdiction of this Court under Article 227 of Constitution of India is not available. In the instant case, this Court does not find any such jurisdiction infirmity in the order passed by the Court below.

For the aforesaid reasons, the revision is dismissed, confirming the order passed by the Court below. It is also made clear that the Court below shall dispose of the suit without being influenced by the observations made either in the impugned order or in the present order. No order as to costs.

As a sequel, miscellaneous Petitions, if any, pending shall

stand closed.

A.V.SESHA SAI, J

Date: 06.02.2015
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