

THE HON'BLE SRI JUSTICE K.C.BHANU

CIVIL REVISION PETITION No.4548 OF 2014

ORDER:

The Civil Revision Petition is directed against the order, dated 31.10.2014, in I.A.No.739 of 2014 in A.S.No.29 of 2013 on the file of the XIII Additional District Judge, Narasaraopet, whereunder and whereby, petition filed by the petitioner/appellant/plaintiff under Order XXVI Rule 9 read with Section 151 of the Code of Civil Procedure, 1908 (for short, "C.P.C.") seeking to appoint an Advocate Commissioner to note down the boundaries and physical features, and to measure the suit schedule property basing on the documents filed by both the parties with the help of surveyor, was dismissed.

2. Petitioner herein/appellant (party-in-person) filed O.S.No.330 of 2007 against the respondents herein/defendants for permanent injunction. Pending suit, she filed I.A.No.698 of 2010 seeking appointment of an Advocate Commissioner and the same was dismissed on 9.10.2012, and that order has become final. Later, the suit was also dismissed on 31.12.2012. Aggrieved thereby, she preferred the aforementioned appeal. Pending appeal, she filed I.A.No.739 of 2014 for appointment of Advocate Commissioner and the same was also dismissed. Challenging the same, she filed the present Revision Petition.

3. The party-in-person contended that the relief in both the applications is different; that within one month from the date of passing the earlier order i.e., on 9.10.2012, the suit was disposed of and therefore, there was no occasion for her to challenge the order, dated 9.10.2012, and hence, she prays to admit this Revision Petition.

4. I.A.No.698 of 2010 in O.S.No.330 of 2007 was dismissed by the trial Court on 9.10.2012. Thereafter, the suit was dismissed on 31.12.2012. Therefore, sufficient time was available to the petitioner to challenge the earlier order. The principle of *res judicata* would be applicable even in the same proceedings. Petitioner ought to have challenged the order, dated 9.10.2012, before the disposal of the suit on 31.12.2012. There is no difference with regard to prayer sought for in the present petition and the earlier petition. In the present petition, it is added to measure the schedule property by the Advocate Commissioner with the help of a Surveyor. Therefore, the relief sought for in both the petitions is almost one and the same. Hence, the Court below rightly dismissed the aforementioned Interlocutory Application and that order needs no interference by this Court.

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

JUSTICE K.C.BHANU

Date: 27.2.2015
AMD

THE HON'BLE SRI JUSTICE K.C.BHANU

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DATE:27.02.2015

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