

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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CIVIL REVISION PETITION No.1209 of 2015

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ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the Learned Additional Senior Civil Judge, Tirupati in I.A. No.857 of 2014 in O.S. No.564 of 2007 dated 06.02.2015.

I.A. No.857 of 2014 was filed by the petitioners herein (defendants in O.S. No.564 of 2007) under Order 26 Rule 9 CPC for appointment of an Advocate Commissioner to assist the Mandal Surveyor to measure the land sold by the plaintiff, and to identify B Schedule property belonging to the petitioners.

The petitioners' case, in short, is that, while the respondent-plaintiff had purchased the land ad-measuring Ac.1.00 from the rightful owner, he had sold out more than Ac.1.00, and had filed the suit against the petitioners; they had purchased the property from the rightful owner; and, in order to locate the property sold by the respondents-plaintiffs basing on the sale deeds and link documents and to ascertain the actual possession of land sold by them, a Commissioner should be appointed.

The respondent-plaintiff filed their counter before the Court below denying the averments in the affidavit filed in support of the I.A. They contended that the application was filed at the stage of arguments; it was not possible to measure the property, taking into consideration the title deeds and link documents; and it was also wholly unnecessary to do so.

By the order under revision, the Court below held that the 1st respondent had filed the suit for declaration of his title in respect of plaint A and B schedule property, for delivery of vacant possession, and for grant of permanent injunction; the evidence on both sides was closed, and the main case was coming up for

arguments since 10.12.2014; the petitioners, who were the defendants 1 and 2, had filed the petition for appointment of an Advocate Commissioner to measure the land which was sold by the 1st respondent, and to identify the B schedule property; the suit filed by the 1st respondent was for declaration of his right, title and for delivery of possession; it was for the respondent-plaintiff to prove his case; a Commissioner could not be appointed to gather evidence; as the 1st respondent had filed the suit, seeking declaration of his right and title, the burden lay heavily on him to prove the location, and his right over the same; the petitioners, who were defendants in the suit, need not locate the suit schedule property; if the plaintiff was able to prove his title, the relief would be granted, otherwise not; the plaintiff could also not take advantage of the weakness or defects of the case of the defendants; and no relief could be granted to the petitioners to measure the land sold by the 1st respondent under different sale deeds.

The order of the Court below is a well considered and reasoned order. The Court below has rightly held that the burden lies heavily on the plaintiff, who has sought for a declaration of his title over the suit schedule property, to establish his title; he was not entitled to rely on the weaknesses and defects in the case of the defendants; and, in an application filed under Order 26 Rule 9 CPC, an Advocate Commissioner cannot be appointed to gather evidence. It is also evident from the order of the Court below, that the suit itself was coming up for final arguments; and, at the fag end of the proceedings in the suit, the application, for appointment of an Advocate Commissioner, has been filed.

The order of the Court below does not suffer from any patent illegality necessitating interference in proceedings under Article 227 of the Constitution of India. The Revision fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date: 02.04.2015

MRKR