

THE HON'BLE SRI JUSTICE K.C.BHANU

CIVIL REVISION PETITION No.220 OF 2015

ORDER:

The Civil Revision Petition is directed against the order, dated 03.12.2014, in I.A.No.676 of 2014 in O.S.No.189 of 2012 on the file of the II Additional Junior Civil Judge, Guntur, whereunder and whereby, petition filed by the petitioner herein/defendant under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (for short, "C.P.C.") to appoint an Advocate Commissioner to inspect the land in T.S.No.771 belonging to the respondent/plaintiff and the land in T.S.No.772 belonging to the petitioner/defendant along with qualified surveyor regarding the site in controversy between the petitioner and the respondent, and to decide the extents of their lands and file his report, was dismissed.

2. Heard the learned counsel for the petitioner/defendant.
3. Respondent herein/plaintiff filed O.S.No.189 of 2012 against the petitioner herein/defendant for permanent injunction and mandatory injunction. Pending suit, the defendant filed I.A.No.676 of 2014 and the same was dismissed on the ground that the property in question was already surveyed twice by the competent Surveyors. Challenging the same, the defendant filed the present Revision Petition.
4. Learned counsel for the petitioner/defendant contended that no material is filed to show that the property in question was surveyed by the competent Surveyor; that the plaintiff constructed the building illegally and in excess of the approvals by the Municipality; that the appointment of the Commissioner is necessary to decide the extent of the properties of both the parties and no prejudice would be caused to the plaintiff if the Advocate Commissioner is appointed and hence, he

prays to set aside the impugned order.

5. Order XXVI Rule 9 C.P.C. provides that a Commission for local investigation can be issued for elucidating any matter in dispute, but the object of local investigation is not to collect evidence, which can be adduced in Court. In other words, the purpose of Order XXVI Rule 9 C.P.C. is not to assist a party in getting the evidence, which the party itself is required to adduce evidence.

6. As seen from the affidavit filed for appointment of Advocate Commissioner, it is clear that the plaintiff got constructed the ground floor and the first floor extending over to the compound wall of the defendant and thereby causing lot of inconvenience for air and light to him. Therefore, he seeks for appointment of commissioner to resolve the controversy between the plaintiff and the defendant and to decide the extents of their lands. The respondent has taken a plea that a qualified surveyor conducted survey vide proceedings in Rc.No.145/2001, dated 05.12.2011, in which the petitioner/defendant participated in the survey proceedings. From the evidence on record, it is clear that the Assistant Director of Survey and Land Records, Collectorate, Guntur conducted survey basing on the application filed by the defendant and submitted reports as per Exs.A-3 and A-4. If he is aggrieved, he has to file an appeal against Exs.A-3 and A-4. Therefore, when the survey report is already available on record, the question of appointment of Advocate Commissioner for the same purpose cannot be entertained. Therefore, the trial Court rightly dismissed the aforesaid application and that order needs no interference by this Court, and the Civil Revision Petition is liable to be dismissed.

7. 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: 06.02.2015
AMD

THE HON'BLE SRI JUSTICE K.C.BHANU

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