

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

CIVIL REVISION PETITION No.4331 OF 2015

ORDER:

Heard learned counsel on either side.

This revision is directed against the order of the Principal Senior Civil Judge, Tirupati, in dismissing I.A.No.1050 of 2014 under the impugned order, dated 27.07.2015, whereby the request of the petitioners seeking to summon and examine the officers named in the petition stood rejected.

The brief facts disclose that the petitioners filed O.S.No.561 of 2007 to declare the decree granted in O.S.No.65 of 1983, dated 15.12.1988 by the Principal Junior Civil Judge, Tirupati, as vitiated, fraudulent, void, inexecutable and inoperative with regard to the claim of 'C' schedule property and for consequential reliefs. In the said suit, the petitioners have filed I.A.No.1590 of 2014 seeking to examine the advocate commissioner, who executed warrant in A.S.No.17 of 1989. The said I.A. was allowed on 04.06.2012, but the advocate commissioner could not be examined and therefore the petition was closed. Thereafter the petitioners filed another application in I.A.No.439 of 2014 to reopen the evidence by setting aside the order in I.A.No.1590 of 2014 to examine the advocate commissioner and also other witnesses mentioned therein. That application was rejected by the trial Court on 09.07.2014. Questioning the same, the petitioners filed C.R.P.No.2558 of 2014. After hearing both sides, this Court disposed of the said C.R.P. on 07.11.2014 directing the trial Court to give one more opportunity to the petitioners to examine the advocate commissioner only. Thereafter, it appears that the advocate commissioner was examined and the petitioners have filed the present application to examine the other officers. The Court below, having noticed that this Court in C.R.P.No.2558 of 2014 only permitted the examination of the advocate commissioner, dismissed

I.A.No.1050 of 2014 under the impugned order. Aggrieved by the same, the present revision is filed.

Though Sri J. Ugra Narasimha, learned counsel for the petitioners, has pointed out that the prayer in I.A.No.439 of 2014 included examination of other witnesses apart from the advocate commissioner, the trial Court dismissed the I.A. in its entirety and this Court allowed the same to the extent of the examination of advocate commissioner, but did not negate the petitioners' plea for examining the other witnesses. Hence, there is no reason for dismissing I.A.No.1050 of 2014.

Per contra, Sri P. Chandramouli, learned counsel for the respondents, submits that the initial prayer of the petitioners in I.A.No.1590 of 2014 was only for examination of the advocate commissioner and the same prayer was reiterated in I.A.No.439 of 2014 by adding other witnesses. However, this Court in C.R.P.No.2558 of 2014 permitted the examination of the advocate commissioner only and hence the impugned order is clearly justified.

I have seen the order of this Court in C.R.P.No.2558 of 2014, which only permits the advocate commissioner to be examined. It is to be remembered that the prayer in I.A.No.1050 of 2014 was sub-judice in the said revision and when this Court accepted the prayer in C.R.P.No.2558 of 2014 partly to permit the advocate commissioner to be examined, the rest of the prayer in the said I.A. is deemed to have been rejected. The relief now sought for by the petitioners in I.A.No.1050 of 2014, therefore, amounts to reviewing the order in C.R.P.No.2558 of 2014, which is impermissible and as such the impugned order does not require any interference.

The Civil Revision Petition is, accordingly, dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in the Civil Revision Petition shall stand closed.

VILAS V.AFZULPURKAR, J

20.11.2015

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