

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

CIVIL REVISION PETITION No.1936 of 2014

ORDER:

Plaintiff in O.S.No.43 of 2010 on the file of the Court of Senior Civil Judge, Sircilla, Karimnagar District is the petitioner in the present revision filed under Article 227 of Constitution of India.

This revision is filed against the order, dated 18-03-2014 passed by the said Court, dismissing I.A.No.309 of 2010 filed by the petitioner herein under the provisions of Order 26 Rule 9 of the Code of Civil Procedure.

Heard Sri V.V. Ramana Rao, learned counsel for the petitioner and Sri A. Nava Mohan Rao, learned counsel for the respondents apart from perusing the material available before this Court.

The petitioner herein instituted the suit for declaration of title and for perpetual injunction in respect of the suit schedule property situated in Sy.No.443 of Jillela village, Sircilla Mandal, Karimnagar District.

In the said suit the petitioner herein filed the present I.A.No.309 of 2010 under the provisions of Order 26 Rule 9 of the C.P.C. seeking appointment of an Advocate Commissioner for noting down the physical features of both Sy.Nos.443 and 450 of Jillela village with the help of Surveyor. Resisting the said application counter-affidavit was filed.

The learned Senior Civil Judge by way of an order, dated 18-03-2014 dismissed the said application filed by the petitioner herein for appointment of Advocate Commissioner.

Calling in question the validity and legal sustainability of the said order passed by the learned Senior Civil Judge the present revision has been filed.

It is contended by the learned counsel for the petitioner that the order passed by the learned Senior Civil Judge is erroneous, contrary to law and opposed to the very spirit and object of provisions of Order 26 Rule 9 of C.P.C. It is further contended by the learned counsel that had the contents of the affidavit filed in support of the present application been considered from proper perspective, order impugned in the present revision would not have emanated. It is further contended by the learned counsel that the reasons assigned by the Court below in the impugned order are contrary to the material available before this Court.

On the contrary, it is argued by the learned counsel for the respondents that the Court below is perfectly justified in dismissing the application filed by the petitioner herein under Order 26 Rule 9 of the C.P.C. It is also submitted by the learned counsel that the present application is only an attempt to collect evidence, which is impermissible under the provisions of Order 26 Rule 9 of the C.P.C.

A perusal of the order passed by the Court below manifestly discloses that the learned Senior Civil Judge dismissed the application mainly on the ground that Sy.No.450 is not shown as one of the boundaries of Sy.No.453 as such there is no necessity for appointing an Advocate Commissioner.

In fact, the material available before this Court clearly shows that the relevant survey numbers in the present case are 443 and 450 but not 453 as observed by the learned Senior Civil Judge. Plan annexed to the written statement also shows that survey numbers 450 and 443 are adjacent survey numbers. This particular fact did not draw the attention of the Court below, which obviously made the learned Senior Civil Judge to pass the order.

On this ground alone this Court deems it appropriate to set aside the order passed by the learned Senior Civil Judge and is inclined to remand the matter to Court below for fresh consideration, in accordance with law.

For the aforesaid reasons, the Civil Revision Petition is allowed, setting aside the order 18-03-2014 passed by the learned Senior Civil Judge, Sircilla in I.A.No.309 of 2010 and I.A.No.309 of 2010 stands restored and it is remanded to the Court of learned Senior Civil Judge, Sircilla for fresh consideration, in accordance with law, after giving necessary opportunity to both the parties. There shall be no order as to costs.

The Miscellaneous Petitions, if any, pending in this Civil

Revision Petition shall stand closed.

A.V. SESA SAI, J

February 24, 2015

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THE HON’BLE SRI JUSTICE A.V. SESA SAI

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CIVIL REVISION PETITION No.1936 of 2014

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February 24, 2015

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