

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.168 of 2015

ORDER:

The unsuccessful petitioner/appellant had filed this revision under Article 227 of the Constitution of India assailing the order dated 07.10.2014 of the learned IX Additional District Judge, Chittoor passed in I.A.no.17 of 2014 in A.S.no.3 of 2014 filed by the petitioner/appellant under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 requesting to appoint an advocate Commissioner to note down the physical features of the suit schedule property and demarcate the same with the assistance of a Mandal Surveyor.

2. I have heard the submissions of the learned counsel for the petitioner/appellant ('the appellant', for brevity) and the learned counsel for the respondent. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this order, in brief, are as follows:

The unsuccessful plaintiff on the dismissal of his suit for perpetual injunction having brought the aforementioned first appeal suit had filed the aforementioned application for appointment of a Commissioner for the purpose mentioned in the introductory paragraph of this order. The said application was resisted by the respondent. On merits and by the order impugned, the trial Court had dismissed the application of the appellant. Therefore, the appellant is before this Court.

4. The case of the appellant and the submissions made on behalf of the appellant, in brief, are as follows:

The suit schedule property is a vacant site and a part of it is a hill/rock. His father had purchased the same under registered sale of the year 1957. Due to passage of time, the Eastern and Western boundaries of the suit schedule property have changed as ownership changed from time to time. Taking advantage of the said fact, the respondent is disputing the existence of the suit schedule property. Being a powerful person, he is likely to change the physical features of the property at any time. On his instigation, some third parties are also attempting to encroach upon the suit schedule property. The third parties and the defendant have raised constructions in a portion of the suit schedule property on the Western side. When the appellant offered resistance, they proclaimed that they purchased the property. Therefore, the instant application is filed seeking appointment of an Advocate Commissioner.

4. The case of the respondent and the submissions made on his behalf are that the suit schedule property and the adjoining property originally belonged to one Basha. It is covered

with rocks and pits. The defendant had purchased
1/4th

share and some others had purchased 3/4th share from out of the property from the original owners. The defendant made constructions even by the date of filing of the suit and the appellant is not in possession of the property. During the pendency of the suit, the appellant/plaintiff had filed an interlocutory application before the trial Court for the same relief and the said application was dismissed and the said order has become final. In a suit for perpetual injunction in which the identity of the property is not in dispute, there is no need to appoint Commissioner to resolve the dispute involved in the *lis*.

5. I have bestowed my attention to the facts and the submissions.

6. Admittedly, the suit is one for perpetual injunction and on the dismissal of the suit after full-fledged trial before the trial Court, the unsuccessful plaintiff had preferred first appeal and the first appeal is pending. Even before the trial Court and in the affidavit filed in support of the instant application before the Court below, the appellant had categorically stated that an encroachment was made into a part of the suit schedule property and constructions were made on the Western side of it. The order of the Court below shows that in the cross-examination of PW1, certain answers were elicited in regard to the said constructions. There is no dispute about the identity of the property is the conclusion of the trial Court and also the Court below in the order impugned. In a suit for perpetual injunction unless there are circumstances, which are exceptional, no Commissioner need be appointed though there is no hard and fast rule that in no suit for perpetual injunction, a Commissioner shall be appointed. Having regard to the facts and submissions, this Court deems that a local inspection/investigation is not requisite in this case in the facts peculiar to this case and that on the very submissions of the appellant, it is apparent that it is not appropriate to appoint a Commissioner for the purpose of elucidating the matter in dispute. Viewed thus, this Court finds that the Court below is justified in dismissing the petition and that the order of the Court below does not brook interference.

7. Accordingly, the Civil Revision Petition is dismissed. No costs. It is needless to state that the Court below shall dispose of the first appeal suit in strict accordance with the procedure established by law, however, uninfluenced by the observations in the order impugned in this revision and the observations, if any, of this Court in the instant order.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SEETHARAMA MURTI, J

27th June, 2016
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