

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2344 of 2016

ORDER:

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This revision is filed under Article 227 of the Constitution of India, challenging the order dated 04.03.2016 in I.A.No.15 of 2015 in O.S.No.1473 of 2003 passed by the III Additional Rent Controller, Hyderabad. The Additional Rent Controller dismissed the petition on the ground that a Commissioner cannot be appointed to find out as to who is in possession of the suit property.

The petitioners filed a petition under Order 26 Rule 9 of Civil Procedure Code (C.P.C.) to appoint an Advocate Commissioner alleging that the respondent filed suit for eviction on false grounds and that the petitioners are in possession of only portion of the suit schedule property and the persons who are in occupation on other part were not impleaded and therefore Commissioner is required to be appointed to inspect the schedule property to find out as to who is in possession of the property. Respondent resisted the claim on the ground that the Commissioner cannot be appointed to collect the evidence since the inspection to find out possession is nothing but collection of evidence. The trial Court dismissed the petition only on the ground that the Commissioner cannot be appointed, accepting the contention of the respondent. Challenging the order passed by the trial Court, the revision is filed on various grounds.

During hearing, learned counsel for the petitioners contended that the petitioners are in possession of 232 square yards, a temple was constructed in an extent of 300 square yards and the balance of site is in occupation of the third parties. Therefore, Commissioner's appointment is necessary to find out as to who is in possession of the

property. However, learned counsel for the respondent Sri P.V.Sanjeeva Rao, supported the impugned order in all respects.

A Commissioner can be appointed under Order XXVI Rule 9 read with Section 75 of CPC for local inspection to determine the real controversy between the parties. But the law does not permit to appoint an Advocate Commissioner for collection of evidence, since it is for the parties to adduce evidence in support of their claim. The relief sought for in the petition is to find out as to who is in actual possession of the suit schedule property. Such inspection would amount to collection of evidence and the trial Court placing reliance on ***Parepapilly Satyanarayana Vs. Vutukuri Meeneder Goud and another***^[1] held that Commissioner cannot be appointed for the purpose of finding out who is in possession of the property. The principle laid down in the above judgment is squarely applicable to the present facts of the case.

Therefore, the trial Court rightly declined the appointment of an Advocate Commissioner for the purpose of finding out as to who is in possession of the property, since it amounts to collection of evidence, which is impermissible under law.

While exercising power under Article 227 of the Constitution of India, the powers of the Court are limited and the power confined under Article 227 of the Constitution of India is supervisory in nature and at best such power can be exercised to see that the Tribunals and Sub-ordinate Courts would act within the limits of their jurisdiction. Even if the order is erroneous, when the Courts passed an order within its jurisdiction, this Court cannot interfere, while exercising power under Article 227 of the Constitution of India. In the present case, the trial

Court rightly passed an order which does not deserve interference by this Court, while exercising power under Article 227 of the Constitution of India and the revision is liable to be dismissed.

Accordingly, the Civil Revision Petition is dismissed, but, without costs, confirming the order passed by the trial Court in I.A.No.15 of 2015 in O.S.No.1473 of 2003 on the file of III Additional Rent Controller, Hyderabad.

Miscellaneous Petitions pending, if any, shall also stand dismissed.

**JUSTICE M. SATYANARAYANA
MURTHY**

08.08.2016
vhb

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