

HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

Civil Revision Petition No.4250 of 2009

ORDER:

This revision petition is filed under article 227 of the Constitution of India, challenging the order dated 31.08.2009 passed in IA No.187 of 2009 in OS No.37 of 2009 on the file of the Senior Civil Judge, Sathupally.

2. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents.

3. A perusal of the record reveals that the petitioner herein filed OS No.37 of 2009 on the file of the Senior Civil Judge, Sathupally, seeking perpetual injunction against the respondents herein and obtained interim injunction in IA No.159 of 2009. Pending suit, the respondents herein filed IA No.187 of 2009 under Order XXVI Rule 9 read with 151 CPC seeking appointment of an Advocate Commissioner to note down the physical features of the suit schedule property. After hearing both sides, the trial court allowed the petition. Feeling aggrieved by the same, the plaintiff in OS No.37 of 2009 filed the present revision.

4. At the time of arguments, both the counsel with one voice submitted that the respondents herein have not filed their written statement in the suit by the time of filing of IA No.187 of 2009.

5. It is needless to state that a party to the civil suit, is not entitled to file a petition for appointment of an Advocate Commissioner for collection of evidence. However, a party to the suit is entitled to file a petition under Order XXVI Rule 9 CPC for appointment of an Advocate Commissioner to note down the physical features of the suit schedule property.

6. In the instant case, the fact remains that the respondents have not filed their written statement. Without filing the written statement, the respondents are not entitled to file application under Order XXVI Rule 9 CPC for appointment of an Advocate Commissioner, more particularly, for the purpose of collection of evidence. The suit was filed for injunction simplicitor. The order passed by the court below is not sustainable either in law or on facts. The trial court committed grave error while allowing the petition. If there is any illegality, irregularity or impropriety in the orders passed by the lower authority, this court can set aside the same by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

7. Having regard to the facts and circumstances of the case, the civil revision petition is allowed and the impugned order dated 31.08.2009 passed in IA No.187 of 2009 in OS No.37 of 2009 on the file of the Senior Civil Judge, Sathupally, is set aside. No order as to costs. Miscellaneous petitions, if any pending in this revision petition, shall stand closed.

Date: 04.11.2016.  
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T. SUNIL CHOWDARY, J

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