

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2083 OF 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is filed by the respondent in I.A. No.298 of 2015 in O.S. No.892 of 2015 challenging the order dated 04.03.2016 passed by the II Senior Civil Judge, City Civil Court, Hyderabad, whereby Sri A.V.Narayana Rao was appointed as Advocate-Commissioner, to visit plot No.1103 premises bearing No.6-1-57 to 61 Mount Nasir Apartment, Saifabad, Hyderabad, with a direction to note down the physical features and take photographs of plot No.1103 while answering the work memos, if any furnished by both the counsel.

02. In the present revision, the main contention before me is that the suit itself is not maintainable since the respondent herein, who is the plaintiff in the suit, did not file any document of title in support of his contention that he is the owner of the property and that his property was damaged. The same contention was urged before the trial court and the trial court noted the same, but did not decide about the maintainability of the suit, since it is not the stage.

03. According to Section 75 read with Rule 9 of Order XXVI of the Code of Civil Procedure, 1908, the Commissioner can be appointed at any time, if the Court found that it is appropriate to decide real controversy.

04. In the present suit, the respondent/plaintiff in the suit, claimed damages caused due to leakage of water and the need of appointment of Advocate-Commissioner is only to note down physical features and take photographs of plot No.1103 which form basis for ascertainment of damages by the Court.

05. Therefore, there is no illegality in the Order passed by the trial court. However, report of the Commissioner is subject to the maintainability of the suit, and also subject to proof of title of the plaintiff before the trial court. Hence, the revision is liable to be

dismissed as there is no illegality, warranting interference of this Court while exercising the power under Article 227 of the Constitution of India.

06. In the result, the revision petition is dismissed. No costs.

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

M. SATYANARAYANA MURTHY, J

Date: 12.08.2016

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