

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.3732 OF 2016

ORDER :

Aggrieved by an order dated 10.06.2016 passed in I.A. No.1065 of 2012 in O.S. No.926 of 2007 on the file of the Principal Junior Civil Judge, Tirupati, dismissing the petition filed under Order XXVI Rule 9 of the Code of Civil Procedure, the present Revision is filed under Article 227 of the Constitution of India.

The facts in issue are as under :

The petitioners herein filed O.S. No.926 of 2007 before the Principal Junior Civil Judge' Court, Tirupati, seeking permanent injunction restraining the defendants, their men, agents, servants, relatives etc., from interfering with the plaintiffs peaceful possession and enjoyment of the plaint schedule property in any manner whatsoever. A written statement came to be filed and oral and documentary evidence was also adduced. When the case was posted for arguments, the present I.A., came to be filed seeking appointment of Commissioner to note down the physical features of the suit property with its boundaries and measurements with reference to the sale deeds dated 26.09.1977 and 18.09.2002 which are in the name of defendant and the sale deed dated 17.05.1972 which is in the name of the plaintiffs, with the assistance of Surveyor and to submit his report along with a sketch.

The affidavit, which has been filed in support of the I.A., goes to show that originally the schedule property and adjoining property belonged to one Bibijan Jaibunnisa Begum purchased under a regd. Sale deed dated 17.05.1972 and later sold away in favour of one K.Gurumurthy. After the death of said K.Gurumurthy, his two sons viz., K.Guruprasad and K.Suresh Babu succeeded to the estate of their father including the plaint schedule property. The said Guruprasad and Suresh Babu agreed to sell away the plaint schedule property for a sum of Rs.1,00,000/- and received an advance amount of Rs.90,000/- on

03.07.1999 from plaintiffs' father. The possession was also delivered on the date of agreement of sale. Further the vendors of the plaintiffs handed over their sale deed which stands in the name of their father K.Gurumurthy and the said fact is also mentioned in the agreement of sale. Further, in the sale deed of the defendant dated 26.09.1977 the northern boundary is mentioned as Reserve Forest land and western boundary is shown as land of K.Venkataswamy. The Reserve forest is located at a distance of 400 feet towards north of plaint schedule property. There are roads both on the northern and south of the plaint schedule property. Beyond the road on the north there is guest house of Indian Airlines. Hence, the plaint schedule land is entirely different to that of the land claimed by the defendant. It is said that any amount of oral evidence will not substantiate the identity, measurements and location. Hence, prayed that the appointment of Advocate commissioner will be helpful in determining the real question in controversy and enables the court to arrive at a just decision.

The respondent filed counter denying the petition allegations. It was submitted that the entire property is in contiguous block and the petitioners by fabricating agreement of sale, wanted to show that the documents were presented at Srikalahasthi in the year 1999 when the property and Sub-Registrar are situated at Tirupati. It is urged that without explaining the same, the petitioners want to investigate the title of the property by localizing the same, in a suit for injunction. Basing on an agreement of sale the above suit was filed and without filing any documentary evidence tried to prove their right. He further submits that filing of the present I.A., is only to gather evidence, as the law is settled that in a suit for injunction no Advocate-Commissioner can be appointed. After hearing both the counsel, the trial court dismissed the said application. Challenging the same, the present Revision is filed.

Heard both the learned counsel appearing for the petitioners and respondents.

It is to be noted that the present application seeking appointment of Advocate-Commissioner was filed in the year 2007. After transfer to another Court the same was re-numbered in the year 2012. The proceedings, which are placed before this Court, do not anywhere indicate that the petitioners herein pursued the said application from 2007 till 2016. Even after the commencement of the trial they did not make any effort in requesting the court to dispose of their application instead of proceeding with the trial. Infact the defendant also appears to have adduced evidence to prove that he is in possession of the property. In the absence of any explanation given by the petitioners for not pursuing their application which was filed in the year 2007, this Court is of the view that entertaining the petition at this stage when the case is posted for arguments, would not be proper. Apart from that the trial court also held that this being a suit for injunction, appointing an Advocate-Commissioner at this stage, would be nothing but permitting the petitioners to collect evidence. Having regard to the said circumstances, this court is of the view that the order under challenge warrants no interference.

Accordingly, the Civil Revision Petition is dismissed. As a sequel to it, miscellaneous petitions pending if any, in the C.R.P. shall stand closed.

C.PRAVEEN KUMAR,J

Dt: 04.08.2016
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