

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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C.R.P.No.68 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is preferred against the order passed by the VI Additional District Judge-cum-Sessions Judge, Mahila Court, Visakhapatnam in I.A.No.841 of 2015 in O.S.No.80 of 2015 dated 07.09.2015.

I.A.No.841 of 2015 was filed by the respondent-plaintiff, under Order XXVI Rule 9 C.P.C, for appointment of an Advocate-Commissioner to get the land, covered by the sale deed dated 16.05.2004, surveyed; and to demarcate the plaint schedule property with the help of the Surveyor, Urban Land Ceiling Department, based on sketch and maps prepared by the Urban Land Ceiling surveyor. A similar application, under Order XXVI Rule 9 C.P.C, was filed by the respondent-plaintiff earlier in I.A.No.1214 of 2009 in O.S.No.80 of 2005. The Court below, by its order dated 19.04.2010, dismissed the I.A. holding that the declarations filed before the ULC authorities were not summoned; there was no information about the availability of any record before the ULC authorities; the I.A. was filed on the premise that the plans and declarations were available before the ULC authorities; the suit, as filed, was for declaration of title; as and how localization of the suit schedule property was relevant, for deciding the title, was not spelt out; the application was filed at a belated stage; and, in the absence of convincing material about the necessity of appointing an Advocate-Commissioner, the prayer for appointment of an Advocate-Commissioner could not accepted. The I.A. was dismissed.

Aggrieved thereby, the respondent-plaintiff carried the matter in revision to this Court. This Court, by its order in C.R.P. No.1607 of 2011 dated 20.06.2013, dismissed the revision holding that the substantial relief of declaration of title must be claimed in the suit; the burden squarely rested upon the plaintiff not only to satisfy the Court as to description and location, but also to prove his title; filing an I.A, under Order XXVI Rule 9 C.P.C. with a prayer to appoint an Advocate-Commissioner to localize the land with the help of the officials of various departments, only showed that the plaintiff was not clear and certain as to the lands in respect of which he claimed the relief;

it was not the duty or task of the Court to identify the land in a suit of this nature; the trial Court observed that the petitioner did not even obtain necessary records from the concerned departments; the petitioner wanted the Court to summon the records from the Special Officer, Urban Land Ceiling, and to take such steps in accordance therewith; he could have obtained certified copies of the concerned proceedings, and to have used them in evidence; it is only where there is a dispute about the boundaries that an attempt can be made to get them verified; and the prayer for localization of the land presupposes that the petitioner is not aware of the particulars of the land, much less location. While dismissing the Civil Revision Petition, this Court left it open to the petitioner to obtain certified copies from the concerned departments, to prove his title and establish the prayer sought for.

The petitioner, thereafter, obtained certified copies from the Urban Land Ceiling Department and filed the present I.A. In the order under revision dated 07.09.2015, the Court below, after noting that C.R.P.No.1607 of 2011 dated 20.06.2013 was dismissed, observed that the relevant records were summoned from the ULC authorities in I.A.No.404 of 2014 dated 18.06.2015; the said record is available in the file; in the light of the order passed earlier, and the High Court order, the petitioner had secured the record; and based on the said record, the Commissioner can localize the plaint schedule property. While allowing the petition, the Court below appointed an Advocate to localize the plaint schedule property with reference to the record.

The order passed by this Court in C.R.P.No.1607 of 2011 dated 20.06.2013 is an order *inter parties* and is binding both on the petitioner-defendant and the respondent-plaintiff. It is no doubt true that the respondent-plaintiff had filed a revision earlier, and it is his revision which was dismissed. In revision this Court, while rejecting the request for appointment of an Advocate Commissioner, held that any such prayer only showed that the plaintiff was not even clear and certain as to the land in respect of which he was claiming the relief; and it was not the duty or task of the Court to identify the land in a suit of this nature. Having so held, this Court also observed that the petitioner wanted the Court to summon the records from the said Officer when he could have obtained certain copies of the concerned

proceedings, and used them in evidence.

While dismissing the C.R.P., leaving it open to the petitioner to obtain certified copies from the concerned department, this Court made it clear that certified copies should be used by the plaintiff to establish his title, and for the grant of the prayer of recovery of money.

In the light of the aforesaid order passed by this Court in C.R.P.No.1607 of 2011 dated 20.06.2013, it was wholly impermissible for the Court below to have sat in judgment over the order passed by this Court, and to have allowed the application for appointment of an Advocate Commissioner. While the submission of Sri G.Ram Gopal, learned counsel for the respondent-plaintiff, that interlocutory orders are discretionary; and this Court would, ordinarily, not interfere with the discretion exercised by the Court below in proceedings under Article 227 of the Constitution of India, has considerable force, it is also well settled that interference, under Article 227 of the Constitution of India, is called for where the order under revision suffers from a patent illegality.

The Court below has committed a patent illegality in allowing the application for appointment of an Advocate Commissioner, in the light of the earlier order passed by this Court in C.R.P.No.1607 of 2011 dated 20.06.2013 holding that it was not the duty or task of the Court to identify the land in a suit of the present nature.

The order under revision must be and is, accordingly, set aside. The Civil Revision Petition is allowed. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

18th March 2016.
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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Date: 18.03.2016

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