

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Civil Revision Petition No.1275 of 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the Senior Civil Judge, Yellamanchili, in I.A.No.519 of 2013 in O.S.No.116 of 2008 dated 18.09.2015. The 1st respondent herein is the plaintiff in O.S.No.116 of 2008 filed for declaration of title and for delivery of possession. The plaintiff appears to have sought permission to withdraw the Suit and, on the Court below refusing such a request by its Order in I.A.No.202 of 2011, to have preferred C.R.P.No.1625 of 2012 which is said to be still pending on the file of this Court.

In I.A.No.519 of 2013, the plaintiff sought appointment of an advocate-commissioner to localize the petition plan plots with the help of the documents filed by the parties, and with the help of the Mandal Surveyor, by preparing a plan, showing the exact physical features, constructed houses and vacant house sites with measurements, and to file a report.

This application was opposed by the petitioner herein who contended that the said application was filed suppressing the fact that the 1st respondent-plaintiff had filed C.R.P. before this Court; the application was only to gather evidence; it was for the 1st respondent-plaintiff to adduce evidence to establish her title; appointment of an advocate-commissioner, to gather evidence, is impermissible; and the application necessitated rejection.

In the order under revision, the Court below observed that, while oral evidence was also required to be adduced during the course of trial in order to come to a just conclusion, the oral evidence of the parties was not sufficient to find out whether there was any encroachment or not; an advocate-commissioner was required to be appointed to localize the petition schedule property, and the properties of respondents 1 to 7, by taking measurements with the assistance of the Mandal Surveyor, according to their respective sale deeds, to find out the encroachment in

Plot No.10; and the plaintiff was entitled to the relief sought i.e for appointment of an advocate-commissioner.

Sri K.Sai Rama Murthy, Learned Counsel for the petitioner, would submit that the Court below ought not to have allowed the application of the 1st respondent-plaintiff for appointment of an advocate-commissioner as her endeavour was only to gather evidence; as the C.R.P. filed before this Court, against rejection of her application seeking permission to withdraw the Suit, is still pending on the file of this Court, the entire proceedings in the present Suit would come to an end if C.R.P. No.1625 of 2012 were to be allowed later; and, under the guise of seeking appointment of an advocate-commissioner to localize the plan-plots, the plaintiff has, in fact, sought to gather evidence; and the Suit is barred by limitation.

The order under revision does not, in any way, disable the petitioner herein from having their contention, with regards limitation and the plaintiff's title over the suit schedule property, examined during the course of hearing of the Suit. All that the order of the Court below has resulted in is for an advocate-commissioner being appointed to localize the plots of the first respondent on the one hand, and the petitioner and respondents 2 to 7 on the other. Mere pendency of the C.R.P. would not require the Court to refrain from deciding the Suit filed in the year 2008, more so as the first respondent-plaintiff's request, for withdrawing the Suit, was rejected earlier. It is also not in dispute that no order of stay has been granted in the C.R.P. filed against the order passed by the Court below in I.A.No.202 of 2011.

Appointment of an advocate-commissioner, in the present case, is only to localize the petition plan plots with the help of the documents filed by the parties, and with the help of the Mandal Surveyor; and to prepare a plan showing the exact physical features, the constructed houses, and the vacant house sites with their measurements.

The jurisdiction, which this Court exercises, under Article 227 of the Constitution of India is supervisory and not appellate. Save patent illegality in, or grave and substantial injustice being caused to the

petitioner invoking the jurisdiction of this Court by, the order under revision, no interference is called for. The order of the Court below does not suffer from any patent illegality, nor can the petitioner be said to have suffered substantial injustice as a result of the order under revision, necessitating interference in proceedings under Article 227 of the Constitution of India.

The Civil Revision Petition fails and is, accordingly, dismissed. The Miscellaneous Petitions, if any pending, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date:11.03.2016.
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