

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 4046 of 2016

ORDER:

1) Aggrieved by an order, dated 11.07.2016, passed in I.A.No.50 of 2016 in O.S.No.2 of 2013 on the file of the XI Additional District Judge, Piler, wherein an application filed U/ o.26 Rule 9 of C.P.C. praying the Court to appoint an advocate-commissioner to note down the physical features of the suit schedule property was rejected, the present Civil Revision Petition is filed.

2) The petitioners are defendants 8 and 9 in O.S.No.2 of 2013 (old No.8 of 2007) which was filed by the plaintiff for partition of item Nos.1 to 5 of the suit schedule properties into thirty equal shares and to allot ten such shares to the plaintiff and to divide item No.6 of the suit schedule property into two equal shares and to allot one such share to the plaintiff by mets and bounds. Thereafter, the defendant No.1 filed his written statement. A memo was filed by the petitioners herein adopting the written statement filed by defendant No.1. In the said case the trial went on and the plaintiff's evidence was also closed. Thereafter, defendants got examined DW.1. At that stage, an application under Order 26 Rule 9 of C.P.C. came to be filed seeking appointment of an advocate-commissioner to note down the physical features of the suit schedule property. A counter came to be filed opposing the same. After considering the rival

arguments, the trial Court dismissed the said application. Challenging the same, defendants 8 and 9 preferred the present revision.

3) Learned counsel for the petitioner mainly submits that since there is a dispute with regard to the location of the property it would be appropriate to appoint an advocate-commissioner to demarcate the boundaries as the evidence adduced by both the parties may not be sufficient to prove the location of the property.

4) As seen from the record, the suit is of the year 2007 and written statement was filed long back. Trial went on and after completion of entire evidence of plaintiff and after examining DW.2, the present application came to be filed nine years after filing of the suit.

5) Learned counsel for the respondent opposed the revision contending that in a partition suit there is no necessity to appoint an advocate-commissioner to note down the physical features of the suit schedule property.

6) A perusal of the material placed before the Court would show that in the instant case the plaintiff's evidence was closed and DW.1 was also examined on behalf of the defendants. At that stage, the present application came to be filed.

7) Admittedly the suit is filed for partition of the schedule properties. No effort was made at the earliest point of time for appointment of an advocate-commissioner. No reasons are

forthcoming explaining the delay in filing the said application. Apart from that in the partition suit the advocate-commissioner can be appointed in a final decree petition only after passing of preliminary decree. Having regard to the circumstances stated above, I see no reasons to interfere with the impugned order.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

29.08.2016
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