

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

-

Civil Revision Petition No.334 of 2016

ORDER:

Heard Sri A.Sudarshan Reddy, Learned Senior Counsel appearing on behalf of the petitioner and Sri T.V.S.Prabhakara Rao, Learned Counsel for the respondent.

The order under revision was passed by the Additional Senior Civil Judge, Gajuwaka, Visakhapatnam District, in I.A.No.593 of 2015 in O.S.No.206 of 2010 dated 18.12.2015. I.A.No.593 of 2015 was filed by the petitioner herein, under Order 26 Rule 1 CPC, to appoint an advocate-commissioner for the purpose of localizing the properties covered under Ex.A-2, to note down the presence of electrical connection, bore-well, sump, open well, three sheds/hutments, trees/teak plantation, fencing/compound wall around the property etc. By the order under revision, the Court below rejected the said application holding that the petitioner was seeking to gather evidence by way of the said application.

In so far as the relief sought for by the petitioner herein, in I.A.No.593 of 2015 to the extent appointment of an advocate-commissioner was sought to ascertain details i.e., presence of electrical connection, bore-well, sump, open well, three sheds/hutments, trees/teak plantation, fencing/compound wall around the property etc is concerned, Sri A.Sudarshan Reddy, Learned Senior Counsel appearing on behalf of the petitioner, would fairly state that appointment of an advocate-commissioner could not have been sought for in this regard.

Learned Senior Counsel would restrict the relief sought for by the petitioner to the appointment of an advocate-commissioner to localize the suit schedule property strictly in terms of Ex.A2 to Ex.A6 filed by the respondent-plaintiff herein. He would draw attention of this Court to the specific plea of the respondent-plaintiff, in the plaint filed by him, that, when he enquired about the unlawful acts of the defendant, the defendant had stated that the plaint schedule property was purchased by him, and he had right over the property; the plaintiff had made a proposal for survey of the land with the help of the Government Surveyor; they requested the

defendant to bring their documents to prove existence of title; and the defendant, instead of coming forward with their documents to prove his title, had behaved rudely, and had expressed that he could carry such actions for forcible occupation of plaint schedule property. The plaintiff further stated that the revenue authorities had appointed a surveyor for noting down the existing measurements, but the defendant did not cooperate positively.

While it does appear that the plaintiff himself had sought for a survey to be made of the suit schedule land with the help of the government surveyor, these facts do not appear to have been taken note of by the Court below. While the submission of Sri A. Sudarshan Reddy, Learned Senior Counsel that, in view of the specific plea in the plaint that the land should be surveyed with the help of a government surveyor, the application filed by the petitioner herein should have been allowed by the Court below has considerable force, the fact remains that the attention of the Court below has not been drawn to the above referred specific averments in the plaint.

The jurisdiction, which this Court exercises under Article 227 of the Constitution of India, is supervisory and not appellate. In the exercise of such jurisdiction, this Court would neither appreciate the evidence on record, nor record any finding of fact thereupon. As the specific averments in the plaint were not noticed by the Court below, I consider it appropriate to set aside the order under revision, and restore I.A.No.593 of 2015 to file. The Court below shall, after affording an opportunity of hearing to both the parties, pass an order afresh in I.A.No.593 of 2015 in accordance with law.

The Civil Revision Petition is, accordingly, disposed of. The Miscellaneous Petitions, if any pending, shall also stand disposed of. No costs.

(RAMESH RANGANATHAN, J)

Date:18.03.2016.
cs