

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2589 OF 2016

ORDER:

This revision, under Article 227 of the Constitution of India, is filed challenging the Order in I.A. No.756 of 2015 in O.S. No.80 of 2011 dated 23.09.2015 passed by the Principal Junior Civil Judge, Srikakulam, whereby the petition filed under Rule 9 of Order XXVI of the Code of Civil Procedure (for short, 'CPC'), to appoint Advocate-Commissioner to localize the suit schedule property, was dismissed.

02. It is the case of the petitioner that the schedule property was devolved upon him, and, thereafter both the respondents have encroached the land an extent of Ac.0.03 cents out of Ac.0.08 cents. Therefore, while denying the title of the respondents-defendants, the petitioner sought for declaration along with perpetual injunction to restrain the respondents from interfering with the possession and enjoyment of the petitioner.

03. The respondents denied the devolution of property on the petitioner and encroachment of land by them to an extent of Ac.0.03 cents out of Ac.0.08 cents.

04. The trial court dismissed the petition on the ground that the petitioner did not produce any evidence to prove that the petitioner is the owner of the property.

05. The present revision is filed challenging the said Order on various grounds mainly contending that localization of the property is necessary for effective adjudication of the dispute and prayed to appoint Advocate-Commissioner.

06. At the stage of admission, heard arguments of Sri T.Tejeswara Rao, learned counsel for the petitioner. He contended that localization of the property is necessary to resolve the controversy between the parties with regard to the property.

07. According to the petitioner, he succeeded the land to an

extent of Ac.0.08 cents from his ancestor in S.No.480/03, and in support of which he produced a copy of SLR, to substantiate his contention that his grand father was the owner of the property. However, the trial court did not accept the contention on the ground that only SLR is not sufficient to believe that the property was devolved upon the petitioner.

08. Admittedly, the petitioner filed suit for declaration of title under Section 34 of the Specific Relief Act, 1963 and for recovery of possession of an extent of Ac.0.03 cents out of Ac.0.08 cents, which is admittedly in possession of the respondents.

09. The petitioner is not disputing the encroachment of Ac.0.03 cents by the respondents. However, the respondents also admitted the possession of Ac.0.03 cents while denying the title, virtually there is no dispute regarding the identity of the property and in those circumstances, the localization of the property is totally irrelevant to decide real controversy between the parties. The petitioner specifically mentioned the boundary, extent and survey number of the property, which is allegedly encroached by the respondents. In such case, it is wholly unnecessary to appoint Advocate-Commissioner to localize the property as there is no dispute regarding the identity of the property.

10. The jurisdiction of this Court under Article 227 of the Constitution is limited in view of the Judgment of the Apex Court reported in **HARI VISHNU KAMATH VS. SYED AHMAD ISHAQUE AND OTHERS**^[1]. Hence, I find no illegality or illegal exercise of discretion by the trial court, exercising power under Article 227 of the Constitution to interfere with the order under challenge, consequently the revision is liable to be dismissed.

11. Accordingly, the revision is dismissed. No costs.

12. Miscellaneous petitions, if any, pending in this revision shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 10.06.2016
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