

THE HON'BLE SHRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.4963 OF 2015

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 30.10.2015 passed by the learned Principal Junior Civil Judge, Narsapur, in I.A.No.990 of 2015 in O.S.No.138 of 2012. The petitioner is the defendant in the said suit. The suit was filed for delivery of the plaint schedule shop rooms after eviction of the defendant therefrom and for recovery of future profits. The petitioner-defendant filed I.A.No.990 of 2015 in the suit under Order 26 Rule 9 CPC seeking appointment of an Advocate-Commissioner to undertake inspection of the suit schedule property and to note whether it consisted of different shop rooms and other features. By the order under revision, the trial Court dismissed the I.A. Aggrieved thereby, the petitioner-defendant is before this Court.

Heard Sri Dasari S.V.V.S.V.Prasad, learned counsel for the petitioner-defendant, and Sri Rama Mohan Palanki, learned counsel for the respondents-plaintiffs.

The claim of the petitioner-defendant in the subject I.A. was that the respondents-plaintiffs are seeking relief treating the suit schedule shop rooms as being covered under a single lease but the same were taken on lease simultaneously under different rents for different purposes. He therefore asserted that it was not open to the respondents-plaintiffs to claim that the two shop rooms were one and the same and sought appointment of an Advocate-Commissioner to note whether the suit property consisted of two different shop rooms or not. This I.A. was contested on the ground that a single lease deed covered both the shop rooms and that the petitioner-defendant was attempting to dispute the quantum of rent. Upon consideration of the rival claims, the trial Court opined that the controversy between the parties was essentially as to the quantum of rent and there was no dispute as to the existence of the

two shop rooms or their identity. Taking note of the legal position, the trial Court concluded that the case was not a fit one for appointment of an Advocate-Commissioner.

Significantly, the written statement filed by the petitioner-defendant conceded that Ex.A.1 registered lease deed dated 09.03.2006 covered both the shop rooms. There was no dispute, so to say, as regards any physical aspects of the suit property. As rightly pointed out by the trial Court, appointment of an Advocate-Commissioner cannot be for the purpose of gathering evidence. It is for the respondents-plaintiffs to prove their case before the trial Court to secure the relief sought by them in the suit. The petitioner-defendant would then have to rebut the suit claim by putting forth his own defence. In the absence of any dispute as to the physical features of the suit property, why the petitioner-defendant filed the subject I.A. is incomprehensible. This Court therefore finds no ground to interfere with the well-reasoned and cogent order passed by the trial Court.

The Civil Revision Petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed in the light of this final order. No order as to costs.

3rd FEBRUARY, 2016
PGS

SANJAY KUMAR, J