

THE HONB'E SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.1579 OF 2017

ORDER:

The civil revision petition is filed by the petitioner-plaintiff seeking a direction to appoint an Advocate Commissioner to note down the measurements and physical features of the petition-“A” and “B” schedule properties.

It is the case of the petitioner that she came to acquire the Schedule “A” and “B” properties from her mother and noticing that Scheduled-B property has been in occupation and enjoyment of the defendants, petitioner filed a suit for declaration of title and mandatory injunction of removal of B-schedule property like pillar, elevation sunshade and other structures.

While it is the contention of the petitioner that B-schedule property is occupied by the respondents by making construction of a compound wall, it is the specific assertion of the respondents that the petitioner is entitled to only for 29 feet as against 33 feet as claimed by her and as a matter of fact B-schedule property is nothing but the retaining wall resultant of demolition of the old house which at present is being used as a compound wall by the respondents. The application made by the petitioner for appointment of an Advocate Commissioner for noting down the physical features is nothing but gathering of evidence, which shall not be allowed.

Having considered the respective submissions and having gone through the respective pleadings, one thing is clear that there exists structure in B-schedule property. This is also stands confirmed on account of the admission of the respondents and also the suit schedule-B property of the plaintiff where she sought a mandatory injunction directing the defendants to remove the alleged unlawful constructions

made by respondents in the B-Schedule property like pillar, elevation, sunshade etc. Whether the petitioner is entitled for the reliefs claimed in the suit could depend upon the evidence they would be able to adduce to establish her right. As of date there is no dispute with respect to the existence of the structures as to whether it be called as a compound wall or the remaining portion of the structure after demolition of the house. As on date it is admitted fact that the plaintiff's evidence was completed and in other words the application filed by the petitioner is at the belated stage. Even other wise, in the facts of the present case appointment of advocate commissioner would in no way helpful for dissolving the dispute when it is an admitted fact that the defendants are in possession and enjoyment of the B-schedule property. In those circumstances, even two judgments relied on by the learned counsel for the petitioner do not come in the aid of the petitioner. The two judgments are:

- a) **Jajula Koteswar Rao v. Ravulapalli Masthan Rao**¹
- b) **Donadulu Uma Devi v. Girika Katamaiah @ Basaiah and others**²

Accordingly, the Civil Revision Petition is dismissed. No order as to costs. Miscellaneous Petitions, if any, pending in this civil revision petition, shall stand closed.

CHALLA KODANDA RAM,J

Date:28.06.2017,
Gk.

¹ 2016(1) ALT 134

² 2013(2) ALD 86

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