

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.1425 OF 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order, dated 20.11.2013, in I.A.No.313 of 2012 in O.S.No.1362 of 2012, passed by the X Junior Civil Judge, City Civil Court, Hyderabad.

Dealing with similar case in CRP.No.1357 of 2017, this Court passed an order, the operative portion reads as under:

“19.It is clear from the affidavit filed along with the petition by the petitioner that there was prior litigation between the parties and their predecessor in title, more particularly in O.S.No.1062 of 1980 wherein the Court observed that the respondents are in possession and enjoyment of the property but declined to grant perpetual injunction on the ground that the respondents did not seek declaratory relief in the suit as it lead to complications. Therefore, the finding of the Court in O.S.No.1062 of 1980 attained finality and even according to those findings, the respondents were in possession of the property prima facie. The main contention of the present petitioner is that the respondents are trying to encroach the common areas i.e. left for roads, footpaths, pathways and the open area in the suit property. If really, the petitioner intends to prevent the respondents from encroaching the footpaths etc. referred supra, the remedy open to the petitioner is to obtain an injunction order under Order 39 Rules 1 and 2 C.P.C. restraining the respondents from encroaching the footpaths etc. referred supra. But, appointment of commissioner to find out what is the exact area of property in occupation of the respondents is directly amounts to collection of evidence. Therefore, the relief claimed under the petition is misconceived in a suit for bare injunction as the respondents did not dispute the physical features but claimed that the respondents are in possession and enjoyment of the entire property in view of the findings recorded by the trial Court in O.S.No.1062 of 1980 and it is a subject matter of dispute to be decided at the conclusion of the trial but if for any reason, the commissioner is appointed to decide as to the exact area in possession of the respondents, it amounts to deciding the real controversy in the main suit i.e. decision as to who is in lawful possession of property as on the date of filing of the suit. Therefore, it is premature to come to such a conclusion and appointment of advocate commissioner in such suit would virtually amounts to deciding the possession of the petitioner which is the outcome of the suit after full fledged trial. In such circumstances, there is no need for appointment of advocate commissioner for

collection of such evidence to find out the exact area of property in possession of the respondents in view of decisions reported in (i) **SAGI VIJAYA RAMACHANDRA RAJU AND OTHERS v. KOPPISETTI SATYANARAYANA AND OTHERS**¹, (ii) **BATCHU NARAYANA RAO v. BATCHU VENKATA NARASIMHA RAO**², (iii) **KODURU SESA REDDY v. GOTTIGUNDALA VENKATA RAMI REDDY AND OTHERS**³, and (v) **YENUGONDA BAL REDDY v. MANEMMA AND OTHERS**⁴. In all the above four judgments, this Court consistently held that appointment of advocate commissioner, in a suit for declaration of title and permanent injunction or in a suit for injunction simplicitor, to note down physical features amounts to collection of evidence. The trial court relying on various judgments rightly concluded that the advocate commissioner cannot be appointed to know the exact area in occupation of the respondents to collection of evidence.

20. Hence, I find no ground in exercising jurisdiction under Article 227 of the Constitution of India to interfere with the impugned order under challenge. Consequently, the revision is liable to be dismissed.

21. In the result, the civil revision petition is dismissed. However, the petitioner is given liberty to renew his request if there are any changed circumstances after passing of this order. There shall be no order as to costs.”

Hence, let there be a similar order even in this case also.

In the result, the civil revision petition is dismissed. However, the petitioner is given liberty to renew his request if there are any changed circumstances after passing of this order. There shall be no order as to costs

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date:06.06.2017

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¹ 2009(6) ALT 353 = 2009(5) ALD 459

² 2010 (5) ALD 83

³ 2006(1) ALD 372

⁴ 2011(3) ALT 232