

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No. 3183 of 2017

ORDER:

This civil revision petition is arising out of order dated 01.12.2016 in I.A.No.718 of 2016 in O.S.No.336 of 2009 on the file of Principal Senior Civil Judge, Mancherial.

2. The revision petitioners are the defendants 16 to 18 in O.S.No.336 of 2009. The respondents 1 to 32 are the defendants. The plaintiff has filed a suit for partition of plaint schedule A and B properties and allotment of 1/24th share to him, and to pass final decree for partition in terms of preliminary decree and to put the plaintiffs in separate possession of 1/24th share and for a decree of Rs.1,81,250/-. During pendency of the suit, defendants 16 to 18 have filed I.A.No.718 of 2016 under Order XXVI Rule 9 read with Section 151 of CPC to appoint an Advocate Commissioner to make local inspection to mark schedule A and B properties in the suit. The trial Court held that there are no sufficient grounds justifying the appointment of an Advocate Commissioner. It was also observed that the suit is of the year 2009 and there is a direction by the High Court to dispose of the suit within one year and, having regard to the nature and stage of the suit, dismissed the I.A. Aggrieved by the dismissal of the I.A., the defendants 16 to 18 filed this civil revision petition.

3. Heard the arguments of learned counsel for the revision petitioners, and the learned counsel for the respondents.

4. It is submitted by the learned counsel for the revision petitioners that the suit was filed in the year 2009 and the plaintiff has filed an application for amendment of plaint in the year 2016 for

inclusion of godown in A schedule property, and the plaintiff himself was instrumental in protracting the litigation.

5. It is obvious from the facts and circumstances of the case that the plaintiffs have filed an application for amendment of plaint in the year 2016 for inclusion of godown in A schedule property. The defendants have filed an application before the trial Court for appointment of Advocate Commissioner to note down the physical features of A and B schedule properties and the godown land.

6. It is the case of the revision petitioners/defendants 16 to 18 that the godown area does not form part of 'A' schedule property and the same was acquired under a decree by late Yellaiah. It is their contention that to locate exactly where the godown area is included in 'A' schedule property, appointment of an Advocate Commissioner would not amount to gathering of evidence for defendants but only to find out where the said godown was in existence in 'A' schedule properties.

7. Learned counsel for the respondents contended that the appointment of Advocate Commissioner for taking measurements of 'A' and 'B' schedule properties and also to find out godown area where it includes Usharanjan Function Hall, would amount to collection of evidence. It is submitted that defendants have to prove that the godown area does not form part of 'A' schedule property by producing their independent evidence and, therefore, appointment of an Advocate Commissioner in this case was only to gather evidence.

8. Admittedly, there is a dispute between the plaintiff and defendants with regard to the partition of Schedule 'A' and 'B' properties. The suit was filed in the year 2009 for partition and separate possession by the plaintiffs. No doubt a petition for

amendment of plaint was filed in the year 2016 for inclusion of godown in the 'A' schedule property. As a matter of fact, there is a direction by this Court to dispose of the suit within one year. The very purpose of filing of I.A.No.718 of 2016 by the defendants 16 to 18 is to appoint an Advocate Commissioner to note down the measurements of the said property and to find out whether a godown is existing in 'A' schedule property or not. The contention of the revision petitioners that the godown area does not form part of 'A' schedule property has to be proved by them by their evidence.

9. The plaintiffs are contending that godown is forming part of schedule 'A' property and, therefore, the burden is on the plaintiffs to prove that the godown forms part of 'A' schedule property; and as the revision petitioners / defendants are disputing the existence of godown in schedule 'A' property, they can lead their evidence to prove their contention that the godown land does not form part of 'A' schedule property. Therefore, an Advocate Commissioner cannot be appointed to decide an issue as to whether the godown is forming part of 'A' schedule property or not and to collect evidence. The suit is of the year 2009 and there was a direction by this Court to dispose of the suit within one year, and no useful purpose would be served by appointing an Advocate Commissioner in this matter. The trial Court has rightly dismissed the application by the impugned order, and the same does not require interference.

10. **IN THE RESULT**, the civil revision petition is disposed of, with the above observations. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

10th November 2017
Yvl / ksm

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD



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