

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CIVIL REVISION PETITION No.3703 of 2017

ORDER:

The present revision petition is filed questioning the order dated 07.03.2017 in I.A.No.281 of 2016 in O.S.No.46 of 2014 passed by the Principal Junior Civil Judge at Kamareddy, whereby and whereunder the petition filed by the defendant under Order XXVI Rule 9 read with 151 C.P.C to appoint Advocate Commissioner for the purpose of demarcation of the suit land, was dismissed.

The aforesaid I.A was filed in the suit filed for declaration that the entry containing the name of the defendant in respect of the land to an extent of Ac.0-09 gts in Sy.No.114/1/2A, under Revenue Khatha No.543, situated at Devunpally village, Kamareddy Mandal, Nizamabad District, is illegal and to cancel the same in the ROR revenue register concerned by the revenue authorities concerned. The 2nd and 3rd reliefs claimed in the suit read thus:

“Further direct the Revenue Authority, The Tahsildar, Kamareddy to cancel the entry of name of the defendant in Survey No.114/1/2A, to an extent of Ac.0-09 guntas, under the Revenue Khatha No.543 situated at Devunpally village, Kamareddy Mandal, Nizamabad District in the ROR Revenue Register concern by the concern authorities;

To pass decree of perpetual injunction, permanently restraining the defendants and his agents and servants, etc., from interfering in the peaceful possession and

enjoyment of the plaintiffs over the suit schedule property (an agriculture land bearing Survey No.114/2, extent of Ac.1-05 guntas situated at Devunpally village of Kamareddy Mandal covered by registered sale deed document No.163/2000 dated 17.01.2000).”

Heard Sri Kiran Patil, learned counsel for the revision petitioner.

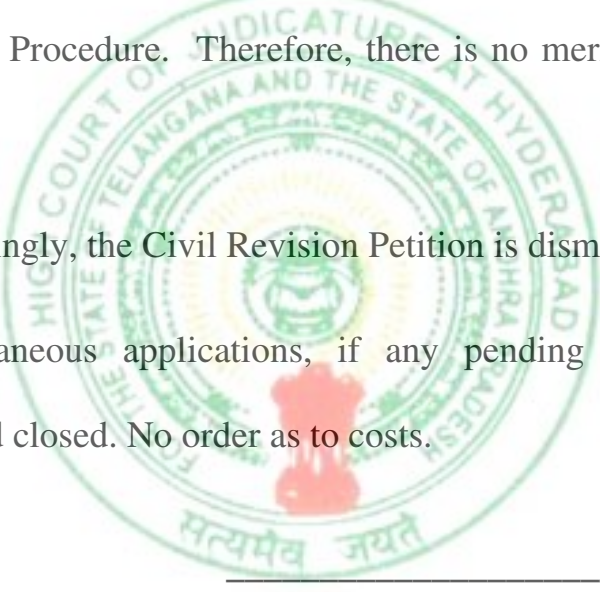
Issue of notice to the respondents – plaintiffs is unnecessary, as it is opined that the present revision can be disposed of at the admission stage itself and the result would not affect the respondents-plaintiffs adversely.

Since the revision petitioner filed copy of the affidavit of chief-examination of PW.1 along with the material papers, certainly, the issues ought to have been settled for trial. However, learned counsel for the revision petitioner is unable to place certified copy of draft issues for perusal of this Court. As such, it is not known whether there is any issue touching the very frame of the suit as to whether the suit is maintainable or not. Be that as it may, the same can be examined by the trial Court after completion of evidence and while disposing of the suit itself. In case such an issue is not settled for trial, it is open to the petitioner – defendant to seek framing of such an issue as an additional issue. However, framing of such additional issue would not preclude the court from deciding all the issues at a time and disposing of the suit.

Now, turning to the grievance of the petitioner, the relief prayed in the I.A., makes it crystal clear that the appointment of Advocate Commissioner is sought for local inspection of the land i.e., to identify the land to an extent of Ac.0.09 guntas in Sy.No.114/1/2A, which, certainly, cannot be done by way of appointment of an Advocate Commissioner. In fact, it is for the plaintiffs to establish their case. The entire burden rests on the plaintiffs and shifting of onus very rarely occurs. Even otherwise, collection of evidence by appointment of Advocate Commissioner is not the object of Order XXVI of the Code of Civil Procedure. Therefore, there is no merit in the present revision.

Accordingly, the Civil Revision Petition is dismissed.

Miscellaneous applications, if any pending in the present revision, stand closed. No order as to costs.



JUSTICE A.SHANKAR NARAYANA

04.08.2017
v v