

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No.3771 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.04.05.2017 in I.A.No.2201 of 2009 in O.S.No.426 of 2009 of the Principal Junior Civil Judge Tadepalligudem.

2. Petitioner is the plaintiff in the above suit. He filed the said suit for perpetual injunction restraining the respondents from interfering with her lawful possession and enjoyment of the plaint schedule property, which is a house property bearing door No.1-118 in Pedatadepalli Gram Panchayath and Village, Tadepalligudem Mandal, West Godavari District.

3. It is not in dispute that the property of the 1st respondent is to the south of the petitioner's property. It is alleged in the plaint that the respondents forcibly and illegally removed the remaining compound wall and were trying to occupy the open site left by the petitioner on the southern side and started removing earth underneath the beam of the compound wall so as to remove the beam and one feet construction thereon in the petitioner's absence.

4. Written statement was filed by the respondent opposing suit claim.

5. Petitioner filed I.A.No.2201 of 2009 to appoint an Advocate-

Commissioner to note down the physical features of the property.

6. It was initially dismissed for non-prosecution, but it was subsequently restored on 07.02.2017 and an Advocate-Commissioner was appointed on 16.02.2017.

7. When the Advocate-Commissioner attempted to execute the warrant, the counsel for petitioner objected to his visit stating that the warrant of commission cannot be executed by the Advocate-Commissioner without the help of Mandal Surveyor and refused to cooperate with the Advocate-Commissioner.

8. In view of this development, on 28.04.2017, the Advocate Commissioner returned back the warrant unexecuted.

9. The counsel for petitioner then filed a Memo in the Court below stating that the physical features in and around the plaint schedule property would have disappeared in the long gap between the filing and disposal of the I.A.No2201 of 2009, and so it is necessary to measure the sites of both parties.

10. The Court below did not agree with this course of action and closed I.A.No.2201 of 2009 observing that the suit being one for injunction, gathering of evidence with the help of Advocate-Commissioner cannot be permitted and the petitioner should prove his case through oral and documentary evidence.

11. Assailing the same, this Revision is filed.

12. The claim in the suit is essentially that the respondents are interfering with the possession of the petitioner of the subject property and the compound wall existing between their respective properties.

13. Any physical features in the area around the compound wall could have been got noted by the petitioner through the Advocate-Commissioner at the time when he filed the suit or thereafter when he filed I.A.No.2201 of 2009. However, the petitioner did not pursue the said I.A. initially, and it was dismissed for non-prosecution in 2014. Later it was restored in February, 2017 and then it was allowed on 16.02.2017.

14. Eight years after the filing of the suit in 2009, no useful purpose would be served if the Advocate-Commissioner is directed to note down the physical features in and around the compound wall, since by efflux of time, this evidence would have disappeared.

Counsel for petitioner in the trial Court himself admitted this fact in the memo filed by him before the trial Court.

15. Having regard to the delay on the part of the petitioner in pursuing this application, the very purpose of filing the petition came to be defeated. Therefore, it cannot be said that the Court below was wrong in closing I.A.No.2201 of 2009, since the petitioner cannot be allowed to collect evidence through Advocate-Commissioner.

16. I therefore do not find any error of jurisdiction in the order passed by the Court below and accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs.

17. Consequently, miscellaneous petitions pending if any shall stand closed.

M.S.RAMACHANDRA RAO, J

18th August, 2017.

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