

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2055 of 2015

ORDER:

This Civil Revision Petition under Article 227 of Constitution of India is filed challenging the Order dt.23.04.2015 in I.A.No.1163 of 2013 in O.S.No.146 of 2013 passed by the Principal Junior Civil Judge, Medchal appointing advocate commissioner to survey the suit schedule property, to demarcate and fix boundaries with the assistance of competent mandal surveyor of Qutubullapur mandal, Ranga Reddy District and fixing commissioner's fee at Rs.3,000/- to be borne by the petitioners.

The petitioner/first defendant filed petition for specific relief which is not conveying any meaning. However, it is extracted below for better appreciation:

"For the reasons stated in the accompanying affidavit, it is therefore prayed this Hon'ble court may be pleased to appoint the commissioner to make and the verify the suit schedule property which survey numbers it falls with the help of the M.R.O. to consider the good and bad qualities and to report the same before this Hon'ble court and pass such other order or orders that this court deems fit and proper in the circumstances of the case and in the interest of justice."

The suit was filed only for bare injunction claiming that the plaintiffs are in possession and enjoyment of the property and to restrain the defendants, their servants, agents, workers from interfering or entering on the suit schedule property within the

boundaries mentioned in the schedule property annexed to the plaint.

The petitioners before the trial Court filed written statement and raised several contentions; one of the contentions raised by the petitioners/defendants before this court is that they are claiming to be in possession and enjoyment of the property in different survey number, therefore, to locate the schedule property and survey numbers. Therefore, before framing an issue, the petition was ordered by the trial Court, but without considering the defence set up by the respondents in the suit. Even otherwise if the property is in different survey number, the boundaries are tallying and the boundaries will prevail over the extent and the report of the commissioner would be helpful to the court to elucidate the facts, but the court cannot appoint advocate commissioner, that too even before framing of issues. Therefore, the order passed by the trial Court is premature and the same is hereby set aside holding that appointment of advocate commissioner to localize the schedule property with reference to the boundaries with the help of mandal surveyor, which amounts to collection of evidence since the parties in a suit for bare injunction are required to prove their positive case by adducing evidence and cannot be permitted to take the assistance of the court by appointing advocate commissioner who is an officer of the court.

Therefore, the order is set aside dismissing the I.A.No.1163 of 2013 as it is illegal and premature. This order will not preclude the respondents to renew their application at appropriate time and if

the request is not for collection of any evidence, the court may consider and pass appropriate order based on the pleadings of both parties and issues framed.

Accordingly, the revision petition is allowed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 24-07-2017
Ccm



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