

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO.466 OF 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order, dated 05.10.2015, in I.A.No.74 of 2014 in O.S.No.269 of 2008, passed by the Additional Senior Civil Judge, Karimnagar, dismissing the application filed by the petitioners herein for appointment of Advocate Commissioner for specific purpose of demarcating the property with regard to the properties based on the registered sale deed, which was allegedly obtained.

The reason assigned before this Court for appointing an Advocate Commissioner is to note down the boundaries and encroachment. Aggrieved by the said order, the present revision petition is filed, challenging the order on various grounds, mainly contending that the third plaintiff purchased the plot under registered sale deed from Syed Rafiuddin on 04.06.1979 measuring 993 sq.yds in Sy.No.760. The first plaintiff purchased the plot measuring 376.44 sq.yds vide document no.11818 of 2004 dated 18.11.2004 from Prakash Lal @ Prakash Lal Namkarni and the second plaintiff also purchased another plot measuring 121 sq.yds under registered sale deed vide document no.927 of 1985 dated 27.02.1985. In all the above documents, in the description regarding to boundaries, the said Syed Rafiuddin clearly mentioned existence of 18 feet wide road and as such, due to

existence of 18 feet wide road in the boundaries, the I.A.No.74 of 2014 filed for appointment of an Advocate Commissioner, as the dispute is with only regard to identity of the property. But, the Trial Court did not consider this real controversy between the parties, observed that the plea of the petitioners is not with regard to the dispute of the boundaries or encroachment or location and concluded that there was no need for appointment of Advocate Commissioner and dismissed the petition. Therefore, prayed to appoint an Advocate Commissioner for the purpose of identifying the plot with reference to the registered sale deed executed in favour of the first respondent/first defendant.

The revision petitioners filed the above petition for the purpose of appointing an Advocate Commissioner contending that they purchased the property under registered sale deeds referred supra, where it was mentioned that there is a road in existence i.e.18 feet wide road as one of the boundaries to the property. A suit was filed vide O.S.No.130 of 1987 which is a collusive suit and obtained a decree showing the boundaries as existing 18 feet wide road. But, based on such decree, the respondents are not entitled to claim any right in the property.

In view of the controversy, an Advocate Commissioner is to be appointed to note down the existence of 18 feet wide road as one of the boundaries, as per the sale deed with the help of Mandal Surveyor.

The respondents filed counter affidavit denying material allegations, mainly contending that there is no need to appoint an Advocate Commissioner and appointing an Advocate Commissioner would amount to collection of evidence and thereby, Court cannot appoint an Advocate Commissioner.

The plaintiff filed a suit for injunction simplicitor, restraining the third defendant from construction or raising any compound wall or structures in the suit schedule property. The plaintiff claimed declaration of the suit schedule property is public street and the defendants 2 & 3 are not entitled to raise any construction or structures, based on the recitals of the document. The second defendant filed written statement contending that, no such passage was in existence and that the defendants are the owners of the property in dispute and prayed to dismiss the petition on various grounds. Therefore, the real controversy between the parties is with regard to existence of 18 feet wide road.

In a suit for injunction simplicitor, restraining third defendant from raising any constructions or structures in the suit schedule property, and to declare that the suit property is a public street, the initial onus of proof is upon the petitioners to prove the very existence of the road which is a public road and the petitioners are not entitled to take the assistance of the Court to collect evidence. 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 OTHERS¹, (ii) BATCHU NARAYANA RAO v. BATCHU VENKATA NARASIMHA RAO², (iii) KODURU SESA REDDY v. GOTTIGUNDALA VENKATA RAMI REDDY AND OTHERS³, and (v) YENUGONDA BAL REDDY v. MANEMMA AND OTHERS⁴. 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.

Therefore, the Trial Court rightly declined to appoint an Advocate Commissioner for collection of evidence and the order under challenge cannot be interfered with by exercising power under Article 227 of the Constitution of India. Hence, I find no ground to set-aside the order under challenge. Consequently, the civil revision petition is liable to be dismissed.

In the result, the civil revision petition is dismissed.

Consequently, miscellaneous applications pending if any, shall stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:13.06.2017

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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