

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.428 of 2014

ORDER:

This Civil Revision Petition under Section 227 of the Constitution of India is filed challenging the Order dt.29.08.2012 in I.A.No.754 of 2012 in O.S.No.809 of 2001 passed by the I Senior Civil Judge, City Civil Court, Hyderabad whereby Sri K. Pradeep Kumar is appointed as commissioner to localize and locate the suit schedule property bearing No.21-2-630 admeasuring 74 sq. yards situated at Urdu Shareef, Pattergatti, Hyderabad as per the registered sale deed, dt.08.09.1975 with the help of surveyor.

2. The petitioner was the first defendant before the trial Court. The petitioner/first defendant filed application under Order XXVI Rule 9 of CPC read with section 151 of CPC to appoint advocate-commissioner alleging that the petitioner before the trial court was alone interested in the matter since the other defendants remained *ex parte* and he is the custodian of wakf property known as Takia Kawdi Shah Saheb bearing No.21-2-629 admeasuring 462.8 sq. yards situated at Urdu Shareef, Pattergatti, Hyderabad which is under direct management of the petitioner and every year Fatheha and Urse-shareef is performed at the said Takia Kawdi Shah Saheb, but the respondents herein are trying to interfere illegally without any right and title to create obstacles in performing Fatheha and Urse-shareef, but could not succeed. To stop attempts of the officials and devotees in performing Fatheha and Urse-shareef, the first respondent herein filed suit by fabricating a document mentioning No.21-2-629 and let in evidence and thereafter got amended the plaint amending the premises as 21-2-630, but let in evidence with regard to the

property bearing No. 21-2-629 only, though the premises bearing No.21-2-630 located outside the area admeasuring 462.8 sq.yards and not within the wakf property. The petitioner before the trial Court also filed written statement contending that the location of the property bearing No. 21-2-630 is necessary to decide the real controversy between the parties and prayed to appoint an advocate-commissioner for the said purpose.

3. The first respondent filed counter denying the material allegations contending that the respondent claiming right in property bearing No.21-2-630 but not in 21-2-629 based on Exs.B-1and B-2 which is outside the boundaries. Therefore, there is no need to appoint advocate-commissioner and prayed for dismissal of the petition.

4. Learned Senior Civil Judge upon hearing the argument of both the counsel allowed the petition appointing Sri K.Pradeep Kumar as Advocate-commissioner for the said purpose.

5. Aggrieved by the impugned order passed by the learned Senior Civil Judge, the present revision is filed on various grounds mainly on the ground that the property claimed by the petitioner herein is totally different from the property claimed by the first defendant belonging to Takia Kawdi Shah Saheb, but identification is not much in controversy. However, the trial Court on erroneous appreciation of facts and without any necessity appointed the advocate-commissioner.

6. During the course of hearing, the learned counsel for the petitioner reiterated the contentions raised before the trial Court while contending that in a suit for bare injunction, an advocate-commissioner cannot be appointed. But, the trial Court on erroneous appreciation of law, appointed advocate-commissioner and prayed for dismissal of the petition.

7. Learned counsel for the respondent supported the order under challenge and prayed for confirmation of the impugned order.

8. The dispute is with regard to identity of the property and initially the petitioner claimed right and title to property bearing No.21-2-629 but later amended the schedule property claiming right and title of property bearing No. 21-6-630, but adduced evidence only in respect of the property bearing No.21-2-629. According to the respondents herein, the property bearing No.21-2-630 is outside the wakf property and it is not part and parcel of the wakf property in an extent of 68.8 sq.yards. Therefore, appointment of advocate-commissioner is necessary to identify whether this property is within the limits of wakf property and if it is outside the property of wakf, the petitioner is entitled to claim right in the property bearing No.21-2-630. The trial Court placed reliance on *SHAIK ZAREEBA KASAM v. PATAN SADAB KHAN AND OTHERS*¹ wherein this Court by placing reliance on *MALLIKARJUNA SRINIVASA GUPTA v. K. SHESHIREKHA*² held that by mere looking into the sale deed or the lay out, it is not possible to determine the rights, unless it is verified whether any portion of the building is constructed in plot No.62. Therefore, it is essential to consider the request of the petitioner for appointment of advocate commissioner for the purpose mentioned therein. Such report will be helpful for the court to decide the real controversy between the parties. Similarly, the trial Court also placed reliance on *CHUKKA VENKATADRI AND ANOTHER v. MALLAVARAPUMAHALAKSHMAMMA AND OTHERS*³ a similar issue came up before the said court and concluded that the advocate-commissioner is necessary. Therefore, the order passed by the trial Court cannot be faulted though the suit is for mere injunction. On the other hand, the

¹ 2011 (4) alt 541

² 2006(4) ALT 162

³ 2006(3) ALD 87

report of the commissioner is helpful to determine the real controversy and in such a case, the order passed by the trial Court does not call for any interference of this Court by exercising jurisdiction under Article 227 of the Constitution of India, thereby I find no ground to interfere with the finding of the trial Court and the petition is devoid of merits and is liable to be dismissed.

9. Accordingly, the revision petition is dismissed affirming the Order dt.29.08.2012 in I.A.No.754 of 2012 in O.S.No.809 of 2001 passed by the I Senior Civil Judge, City Civil Court, Hyderabad. There shall be no order as to costs.

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

Date:04-07-2017
Ccm



M. SATYANARAYANA MURTHY, J

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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