

HON'BLE SRI JUSTICE S.V.BHATT

C.R.P. No.4185 OF 2017

ORDER:

Unsuccessful plaintiffs in O.S. No.88 of 2014 are the revision petitioners. The revision petitioners filed In I.A. No.491 of 2014 for appointment of Advocate Commissioner for the purpose stated in I.A. No.491 of 2014. The affidavit filed in support of I.A. No.491 of 2014 is fairly long and detailed. The contesting respondents/defendants have not missed the opportunity to file an equally long and detailed counter. The Court framed the following point for consideration:

“Whether the plaintiffs are entitled for appointment of Advocate Commissioner as prayed for?”

The findings recorded by the trial Court read as follows:

“As can be seen from the record O.S.No.56/2016, as already stated, was filed by the plaintiff Nos.1 and 2 in O.S. No.88/2014 against defendant No.6 in O.S.No.88/2014, in respect of Acres 0.30 guntas in Sy.No.285. In the said suit the plaintiffs filed I.A.No.402/2011 under Order 26 Rule 9 C.P.C., for appointment of advocate commissioner. The said petition was dismissed by the Senior Civil Judge, Karimnagar, as the suit was filed for perpetual injunction. The plaintiff Nos.1 & 1 in O.S.No.88/2014 who are plaintiffs in the said suit O.S.No.56/2016 allowed the said order to become final as contended on behalf of the defendants. As all the four suits are connected to each other there is force in the contention on behalf of the defendants that this petition is not maintainable in view of dismissal of said petition for the same relief.

The plaintiffs did not show as to how any why appointment of advocate commissioner is necessary. They simply contended that the defendants disputed their case and disputed the identity of land and hence, it is necessary for appointment of advocate commissioner. But as already stated since the plaintiffs approached the Court describing the particular lands with particular boundaries they have to prove their case by adducing relevant oral and documentary evidence. Without doing so, they cannot ask the court simply to appoint advocate commissioner for location of their lands. Apart from the fact that the advocate commissioner is not necessary, the court is of the considered opinion that appointment of advocate commissioner in a case of this nature would be amount to creating evidence when there are no circumstances compelling appointment of advocate commissioner. Hence, the court holds that the plaintiffs failed to prove that they are entitled to appointment of advocate commissioner. Point is answered accordingly.

In the result, this petition is dismissed.”

Mr.Ashwani Kumar for revision petitioners keeping in view the scope of jurisdiction of this Court under Article 227 of the Constitution of India particularly, in interfering with the order passed by the trial Court by exercising its jurisdiction or discretion tried to persuade that the appointment of Advocate Commissioner if allowed, it leads to resolution of at least a few facts in issue and the reasoning recorded by the trial Court in the facts and circumstances of this case is untenable. He prays for setting aside the order impugned in the revision.

*Per contra*, Mr.Venu Madhav contends that the present application for appointment of Advocate Commissioner is satisfying the illustration not permitted by the Courts i.e. gathering evidence

and that unless and until a jurisdictional error or point is shown against the order impugned in the revision, this Court as matter of course may not sit in appeal against each one of the assertions and denial and record its own findings. The scope of revision under Article 227 of the Constitution of India need not be reiterated and at least in the case on hand, this Court fails to understand that the whole issue has been rendered complicated with the lengthy pleadings filed in the I.A. by both the parties. Be that as it may, the trial Court which is seized of the main issue in the suit has understood why the discretion or jurisdiction for appointment of Advocate Commissioner ought not to be exercised in favour of revision petitioners herein, and dismissed the application.

May be that after going through a few of the discrepancies pointed out by Mr. Ashwani Kumar are subsisting in the order under revision still this Court is of the view that unless the findings recorded by the trial Court attract one or the other grounds available for judicial review, the revision ought not to be entertained, much less disturbed the discretion exercised by the trial Court. The revision fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V. BHATT, J

Date: 10.11.2017

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