

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.457 2016

ORDER:

1 This Civil Revision Petition, under Article 227 of the Constitution of India, is filed challenging the order dated 15.10.2015 passed in I.A.No.66 of 2014 in O.S.No.22 of 2014 on the file of the Court of the Senior Civil Judge, Kamareddy, wherein and whereby the petition filed by the petitioner under Order XXVI Rule 9 CPC was dismissed.

2 Heard the learned counsel for the petitioner.

3 The facts leading to the filing of the present Civil Revision Petition are as follows:

4 The petitioner filed O.S.No.22 of 2014 against the respondents for declaration and recovery of possession. Pending suit, the petitioner filed I.A.No.66 of 2014 under Order XXVI Rule 9 CPC for appointment of an advocate commissioner to note down the existing structures over the suit schedule property. The 4th respondent filed counter opposing the claim of the petitioner. The trial Court, after hearing both sides, dismissed the petition. Hence the present Civil Revision Petition.

5 The learned counsel for the petitioner strenuously submitted that the trial Court committed grave error in dismissing the petition filed by the petitioner for appointment of an advocate commissioner. He further submitted that no prejudice would be caused to the respondents even if advocate commissioner is appointed.

6 The petitioner filed the suit for declaration of title and recovery of possession and for a consequential relief to declare the registered sale deed No.5078 of 2012 dated 11.07.2012 and its link documents is null and void and not binding on him and also for a mandatory injunction directing the 4th respondent to hand over the vacant physical possession

of the suit schedule property by demolishing existing structures raised thereon. The suit schedule property is plot bearing No.1/1 admeasuring 140 sq. yards in Sy.No.209/23, situated at Devunipalli village of Nizamabad district. The petitioner as well as the respondents are claiming the suit schedule property basing on registered sale deeds. It is needless to say that in a suit for declaration, the plaintiff may succeed or fail basing on strength or weakness of his own case. The plaintiff is not entitled to the relief of declaration basing on laches or lacunae on the part of the defendant. To put it in a different way, in a suit for declaration, the plaintiff has to establish his case by preponderance of probabilities. In order to succeed the suit, the plaintiff has to establish that the sale deed dated 11.03.2008 and its link documents are null and void by letting cogent and convincing evidence.

7 The pleadings of the plaintiff clearly reveal that he is not in possession of the suit schedule property. The other relief sought by the petitioner is to direct the 4th respondent to deliver vacant possession of the suit schedule property after demolishing the structures raised thereon. I have carefully perused the affidavit filed by the petitioner in support of the petition filed before the trial Court, which clearly discloses that the petitioner has challenged the validity of the sale deeds of the respondents. The petitioner himself has admitted the existence of structures in the suit schedule property. If ultimately the plaintiff succeeds the suit, he is entitled for recovery of possession of suit schedule property after demolition of the structures which were allegedly raised by the respondents thereon. In such circumstances, the necessity of appointment of advocate commissioner does not arise.

8 The other plea taken by the petitioner is that in order to measure the actual area of the suit schedule property it is just and necessary to appoint advocate commissioner.

9 It is the duty of the petitioner to establish the measurements of the suit schedule property. If advocate commissioner is appointed for the purpose of measurement of the suit schedule property, it is nothing but collection of evidence on behalf of the petitioner, which is impermissible under law. There is no dispute between the parties with regard to the identity or boundaries of the suit schedule property. Viewed from this angle also there is no necessity to appoint advocate commissioner. The trial Court has considered various aspects in right perspective and dismissed the petition. I am fully endorsing with the findings recorded by the trial Court.

10 Viewed from any angle, it is not a fit case to interfere with the order passed by the trial Court while exercising jurisdiction under Article 227 of the Constitution of India. The Civil Revision Petition lacks merits and bonafides and hence the same is liable to be dismissed.

11 In the result, the Civil Revision Petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions, if any connected to this Civil Revision Petition, shall stand closed.

T. SUNIL CHOWDARY, J.

Date: 23.03.2017
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