

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No.830 OF 2017

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed by the petitioners-appellants-plaintiffs challenging the order dated 21.12.2016 passed in I.A.No.161 of 2016 in A.S.No.26 of 2013 by the XI Additional District Judge at Piler, Chittoor District, whereby the application filed by the petitioners for appointment of an Advocate Commissioner was dismissed.

Facts leading to filing of the present revision, in brief, are as follows:

Initially, petitioners filed O.S.No.257 of 2007 on the file of the Junior Civil Judge, Vayalpad, seeking permanent injunction. Vide judgement and decree dated 09.11.2016, the trial Court dismissed the said suit. As against the same, petitioners filed A.S.No.26 of 2013 before the XI Additional District Judge, Piler, wherein they also filed I.A.No.161 of 2016 under Order XXVI Rule 9 r/w. Section 151 of the Code of Civil Procedure seeking appointment of an Advocate Commissioner to make local inspection of the appeal schedule property in order to note the existing physical features and such other aspects that are brought to his notice in order to file his report in the interest of justice. As the said application came to be dismissed, present Civil Revision Petition is filed.

Heard and perused the material on record.

As seen from the material on record, admittedly, the revision petitioners filed an application before the trial Court seeking appointment of advocate commissioner and the same was allowed. Pursuant thereto, an Advocate Commissioner was appointed, who visited the schedule property, submitted his report before the trial Court, which has attained finality. After considering the same and other oral and documentary evidence, the trial Court dismissed the suit filed by the revision petitioners vide judgment and decree dated 09.11.2016. Once again, in the appeal filed against the said judgment, the petitioners filed an application seeking the very same relief i.e. appointment of advocate commissioner. The only reason assigned by the revision petitioners is that the respondent is trying to change the physical features of the schedule property and hence appointment of an advocate commissioner is essential. It is to be noticed that in the appeal filed by the petitioner, no interim order came to be passed in his favour. That being the position, the respondent can act and proceed in accordance with law, which he will be doing so at his own risk. Further, as the suit is for injunction, the petitioner has to prove that he is in possession of the property as on the date of filing of the suit. An Advocate Commissioner was already appointed pending trial, who has filed his report. The same remained unchallenged till date. Unless the report submitted by the advocate commissioner, at the first instance is set aside, the application filed by the petitioners for appointment of an advocate commissioner for the second time for the same cause cannot be entertained.

For the aforesaid reasons, I see no perversity or illegality in the impugned order and the Civil Revision Petition is liable to be dismissed as devoid of merit. Accordingly, the Civil Revision Petition is dismissed.

Miscellaneous Petitions pending in this revision, if any, shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

21.04.2017
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