

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.3703 of 2011

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India by the petitioners/defendants challenging the order dated 10.08.2011 in I.A.No.317 of 2011 in O.S.No.241 of 2004 passed by the Junior Civil Judge, Venkatagiri.

The petitioners filed an application under Order 26 Rule 9 of the Code of Civil Procedure (for short 'C.P.C.') to appoint advocate Commissioner to inspect the suit schedule property and note down the existing building of the petitioners and note down some other available existing features.

The petitioners stated that the 1st petitioner purchased the vacant site for valuable consideration of Rs.48,500/- from the 1st respondent and obtained plan approval from the Grampanchayat and accordingly constructed a building, obtained electricity connection and also dug bore well and the property was assessed by Venkatagiri Municipality. It is also contended that during evidence, PW.1 in her examination in chief did not admit the construction of the building in the site and residing there. Prior to filing of the suit, she constructed the house and residing therein along with her family, but PW.1 did not admit the peaceful possession and enjoyment of herself and the 2nd petitioner and suppressed the construction of building in the suit property. Therefore, it is necessary to appoint an advocate commissioner.

The trial Court dismissed the petition assigning its own reasons and the same is challenged on various grounds, mainly on the ground that the building was constructed by the petitioners and staying therein in the schedule property. But the trial Court did not take the said contention while dismissing the petition and when there is dispute with

regard to the entitlement to the property, whether the suit property is on Plot No.26 or on Plot No.27, the Court has to appoint an advocate commissioner, for elucidating the facts to decide the real controversy between the parties.

The petitioners placed on record the copy of the affidavit filed along with the petition before the trial Court asserting that petitioner No.1 purchased the property, obtained approved plan from the Grampanchayat, constructed building therein and residing therein. Based on such allegations, the Commissioner cannot be appointed.

The trial Court after consideration of the material on record, keeping in mind the nature of the suit filed, dismissed the petition. Even the intention of the petitioners is to find out who is in possession of the disputed property with reference to the boundaries, which amounts to collection of evidence and hence, the Commissioner cannot be appointed to collect evidence, since the petitioners have to prove their case independently without assistance of the Court, since the Commissioner is an officer of the Court. Therefore, such power cannot be exercised under Order 26 Rule 9 of C.P.C. Moreover, the affidavit of the petitioners is silent as to the cause requiring appointment of the advocate commissioner. In such a case, the order passed by the trial Court cannot be found fault and I find no ground to exercise power under Article 227 of the Constitution of India.

In the result, the Civil Revision Petition is dismissed. No costs.

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

M. SATYANARAYANA MURTHY J

Date: 09.06.2017
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