

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1817 OF 2015

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, is filed by the petitioner challenging the order, dated 02.04.2015, passed in I.A.No.748 of 2014 in O.S.No.1636 of 2012, by the learned XVII Additional Senior Civil Judge, City Civil Court, Hyderabad.

2. The petitioner filed I.A.No.748 of 2014 in O.S.No.1636 of 2012 under Order 26 Rule 9 of the Civil Procedure Code, 1908 (for short, "CPC"), on the file of the XVII Additional Senior Civil Judge, City Civil Court, Hyderabad, for appointment of an Advocate Commissioner to fix the boundary of Survey No.1/12 (new Survey No.30) and the Survey No.1/13 of Asif Nagar Mandal, Hyderabad, by taking the services of Department of Survey and Settlement. The respondents contended that the suit schedule property form part of Survey No.1/12P, which is the Government land and the petitioner has no right and title over the suit schedule property and at this stage, the petition for fixing the boundaries with the aid of advocate commissioner is not maintainable. The trial Court, upon hearing argument of both the counsel, dismissed the said I.A. by holding as follows:

"But as a matter of fact, the main suit is filed for declaration that the suit schedule property is a private land and the petitioner is having right over it, it is for the petitioner to prove her title and possession over the suit schedule property by adducing oral evidence and also by producing documents in support of her contention. The relief claimed by the petitioner in the present application

appears to go in to the roots of the case as the main relief of the petitioner in the suit itself is for declaration of title and if the present application is allowed it is nothing but for collection of evidence which is not permissible under law by appointing an advocate commissioner as it is a settled law that the advocate commissioner cannot be appointed for collection of evidence.”

3. The said finding is challenged now in the present civil revision petition on various grounds.

4. Undisputedly the petitioner earlier filed a suit in O.S.No.4072 of 2010 on the file of the IX Junior Civil Judge, City Civil Court, Hyderabad, with the following reliefs:

- “A By declaring that the suit schedule property is private land and plaintiff is having rights and title over it (Added as per orders in IA 237 of 2012 dt 04.6.2012)
- B by issuing perpetual injunction orders against the defendants, their men and agents, legal heirs, successors etc. from interfering with the peaceful possession and enjoyment of the premises bearing No.13-5-565/A/5, Mahboob Colony, Asif Nagar, Hyderabad admeasuring 100 Sq. Yards bounded by EAST: Part of Property in Sy. No.1/12; WEST: Part of Property in Sy. No.1/12; NORTH: Road; SOUTH: Sy. No.1/14 by the plaintiff.
- a) award costs of the suit.”

5. In clause B of the prayer, the petitioner herself specified the boundaries and its survey numbers in compliance with Order VII Rule 3 of CPC.

6. Order VII Rule 3 of CPC reads as follows:

"Where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property

can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers."

7. The petitioner furnished both the premises number and the boundaries in compliance with Order VII Rule 3 of CPC, but now the petitioner filed the I.A.No.748 of 2014 in O.S.No.1636 of 2012 to appoint an Advocate Commissioner to fix the boundaries as the 2nd respondent-defendant, in the written statement, at para 3 did not admit that the petitioner-plaintiff is the absolute owner and possessor of the suit schedule property, but that itself is not a ground to appoint an Advocate Commissioner. When there is no dispute regarding the identity, the question of appointing an Advocate Commissioner does not arise. Even otherwise, it is for the petitioner to establish independent case by producing specific evidence before the Court and appointing an Advocate Commissioner to fix the boundaries before deciding the suit would amount to grant of pre-trial decree as held by the Supreme Court in ***Haryana Wakf Board Vs. Shanti Sarup and others***¹.

8. Considering the facts and circumstances of the present case and in view of the law declared by the Apex Court, I find no ground warranting interference of this Court in exercise of power under Article 227 of the Constitution of India in the impugned order passed by the trial Court. However, the petitioner is at liberty to adduce evidence for identifying the property, if really any dispute is raised, before the Court regarding the identity, the petitioner may renew his request at appropriate stage before the

¹ (2008) 8 SCC 671

trial Court and this order would not come in the way of trial Court in deciding any such application.

9. With the above observation, the Civil Revision Petition is disposed of. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.

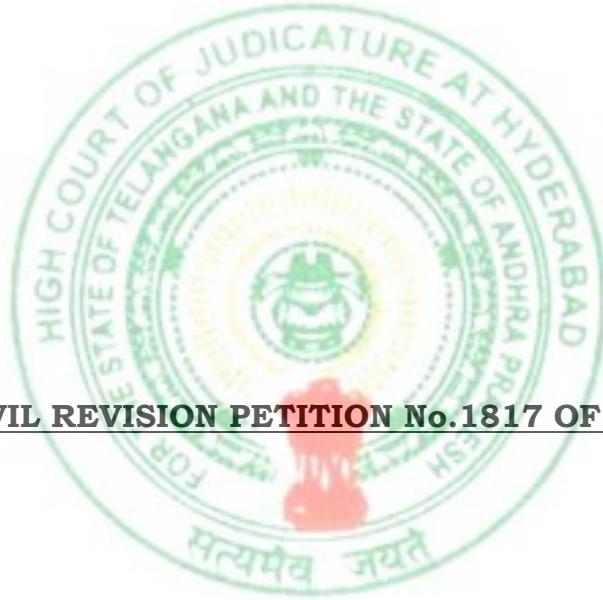
JUSTICE M.SATYANARAYANA MURTHY

Date: 19th April, 2017

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