

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

C.R.P.No.4202 OF 2017

AND

C.R.P.No.4203 OF 2017

COMMON ORDER:

Heard both sides.

These revision petitions are filed under Article 227 of the Constitution of India challenging the order dated 01.08.2017 in I.A.No.152 of 2017 and I.A.No.153 of 2017 in I.A.No. 284 of 2016 in O.S.No.68 of 2016 passed by the Junior Civil Judge, Narsapur, Medak District, dismissing the applications filed to reopen I.A.No.284 of 2016 and to appoint advocate commissioner to note down the physical features and boundaries of the suit schedule property with the help of Additional Director of Survey and Land Settlement in correspondence with the village map.

I.A.No.152 of 2017 was dismissed by the trial Court, passing the following order::

Heard perused the record. This is the reopen petition filed by petitioner/respondent/defendant to reopen the I.A.284 of 2016, which is posted for orders.

The contention of the petitioner/respondent/defendant to reopen the matter and appoint advocate commissioner under Order 26 Rule 9. Whereas the respondent/plaintiff strongly objected to the contention of the petitioner herein.

This application is arising out of suit for perpetual injunction filed by the respondent/plaintiff with respect to the Sy.No.702. It is admitted by the petitioner/defendant that he is not disputing with respect to the Sy.No.702 and he is claiming his rights only for Sy.No.779.

Whereas, upon perusal of the suit docket it is clear that trial of the suit is not yet commenced. In this circumstances our 'Hon'ble High Court in **A.Gopal Reddy v/s R.Subramanyam**

Reddy and another – Hon'ble Justice L.Narsimha Reddy held that in a suit for perpetual injunction appointment of Advocate Commissioner to note down physical feature of suit property before commencement of trial would amount to collection of evidence and same is not permissible.

In the above viewed circumstances, it is clear that the trial has not yet commenced and appointing the Advocate Commissioner is not tenable in the present occasion and is not permissible.

Hence, petition is dismissed.

I.A.No.153 of 2017 was also dismissed by the trial Court as follows:

I.A. vide No.152/2017 in I.A.284/16 is dismissed, which is filed to reopen the case in I.A.284/2016 which was posted for orders.

Hence, the I.A.152/2017 is dismissed which was filed to reopen and appoint Advocate Commissioner.

This present petition (i.e.)I.A.153/2017 which was filed for appointing Advocate Commissioner will stand infructuous.

The Junior Civil Judge is expected to pass a reasoned order either to allow or dismiss the petition. While dismissing I.A.No.152 of 2017 and I.A.No.153 of 2017 in I.A.No.284 of 2016 not even a single ground raised by both parties, was considered by the trial Court. Hence, the cryptic order passed by the Junior Civil Judge, is hereby set aside remanding the matter to its file to pass a reasoned order considering the contents of the petition and counter filed by both parties, keeping in mind the scope of trial in the suit for bare injunction, within 15 days from the date of receipt of a copy of this order.

With the above direction, the revision petitions are disposed of. No costs.

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

M. SATYANARAYANA MURTHY J

Date: 13.10.2017
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