

HON' BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.4338 of 2016

ORDER:

This revision petition, under Article 227 of the Constitution of India, is filed challenging the orders dated 09.08.2016 in I.A.No.860 of 2016 in O.S.No.368 of 2007 on the file of the Court of XIII Additional District Judge, Gajuwaka.

Heard the learned counsel for both parties.

The learned counsel for the petitioners strenuously submitted that the trial Court dismissed the petition without taking into consideration the observations made by this Court in C.R.P.No.2400 of 2016 dated 15.07.2016. He further submitted that the order passed by the court below is not sustainable either on facts or in law.

Per contra, learned counsel for the respondents submitted that I.A.No.860 of 2016 filed by the petitioners is hit by Section 11 of CPC in view of dismissal of I.A.No.144 of 2016. He further submitted that the petitioners herein have not brought to the notice of this Court in C.R.P.No.2400 of 2016 about the dismissal of I.A.No.144 of 2016.

A perusal of the record reveals that the petitioners herein have filed O.S.No.368 of 2007 on the file of the court of XIII Additional District Judge, Gajuwaka against the respondents herein for declaration and consequential perpetual injunction. The petitioners also filed I.A.No.144 of 2016 in O.S.No.368 of 2007 seeking to issue summons to the Mandal Surveyor, Gajuwaka to produce records and give evidence in respect of adangal pahani, Sy.No.8/3 and FMB in Sy.No.8/3 which was sub-divided into new Sy.No.8/3C, 8-1B1 and 8-1B3. The trial Court after affording reasonable opportunity to both parties dismissed the said petition on 29.03.2016. Challenging the orders dated 29.03.2016 in I.A.No.146 of 2016 in O.S.No.368

of 2007 the petitioners filed C.R.P.No.2400 of 2016. While disposing of the CRP at the stage of admission, this Court made the following observation:

“Having regard to the nature of the relief claimed by the petitioners and the steps taken by them to secure Ex.A.37 survey report, it is wholly unnecessary to them to seek appointment of an Advocate Commissioner and that too when the trial is at advanced stage. If the petitioners so choose they are entitled to examine the surveyor who has submitted Ex.A.37 report and then it would be for respondent No.2 to establish his own plea by producing relevant evidence, therefore, I do not find any merit in this civil revision petition and the same is accordingly dismissed.”

Basing on these observations, the petitioners filed I.A.No.860 of 2016. The relief sought in I.A.No.144 of 2016 and I.A.No.860 of 2016 is one and the same. More over, the petitioners have not brought to the notice of this Court about dismissal of I.A.No.144 of 2016. It is an admitted fact that the petitioners did not challenge the orders dated 29.03.2016 in I.A.No.144 of 2016. As observed earlier, the relief sought in I.A.No.144 of 2016 and I.A.No.860 of 2016 is one and the same. As rightly pointed out by the learned counsel for the respondents I.A.No.860 of 2016 is hit by Section 11 of CPC. The trial Court rightly considered various aspects and dismissed the petition. Ex-facie, there is no illegality or irregularity in the orders of the trial Court, which warrants interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

The revision petition lacks merits and bonafides and therefore the same is dismissed. Miscellaneous Petitions pending, if any, shall stand closed.

19th April 2017.
Rns

T.SUNIL CHOWDARY, J

