

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1357 of 2017

ORDER:

This Civil Revision Petition under Article 227 of the Constitution of India is filed by the petitioner challenging the Order dated 20.11.2013 passed in I.A.No.319 of 2012 in O.S.No.1365 of 2012 on the file of the X Junior Civil Judge, Hyderabad to appoint an advocate commissioner to make local inspection of the schedule property and report under Section 26 Rule 9 r/w 151 of C.P.C.

2. The petitioner is the firm India Media Services Private Limited represented by its Authorised Representative, it filed the suit for perpetual injunction restraining the respondents/defendants in the main suit from interfering with peaceful possession and enjoyment of the schedule property and to restrain from encroaching upon the common areas such as passage, pathways, footpaths, open areas etc. surrounding the schedule property covered by municipal No.1-2-570/A, Gagan Mahal Road, Domalguda, Hyderabad which is more specifically described in the schedule property annexed to the plaint.

3. It is the case of the petitioner that the respondents are trying to encroach the schedule property, thereby constrained to file the suit for the reliefs stated supra and along with the suit, the petitioner filed petitions under Order 39 Rules 1 and 2 of C.P.C. and under Order 26 Rule 9 r/w 151 of C.P.C. for grant of interim injunction and for appointment of advocate commissioner.

4. But, in the affidavit filed, he asserted that the respondents are not the owners of the suit schedule property. A finding was recorded in the judgment in O.S.No.1062 of 1980 to that effect and the judgment in O.S.No.1062 of 1980 attained finality.

5. While the matters stood thus, the petitioner learnt that till date father of the first respondent and others have not sought for declaration of title to the property. Thus, father of the first respondent was in possession of the schedule property admeasuring 20 sq. yards covered by municipal No. 1-2-570/A as worker/labour of J.B. Mangaram & Company and the respondents have no independent status. (Vide para 11 of the affidavit filed in I.A.). He also contended that the respondents herein are trying to encroach upon the common areas left for passage, footpath, pathways and the open area surrounding the suit property and that if the respondents are not stopped from proceeding with the illegal acts and attempts, the petitioner will be put to great hardship and loss and decree, if any, passed will become fruitless and therefore, it is necessary to appoint an advocate commissioner to make local inspection and submit report as to the occupation of the exact area by the respondents and the commissioner report will assist the court to come to a just conclusion and sought for appointment of advocate commissioner under Order 26 Rule 9 r/w 151 of C.P.C.

6. The respondents denied the material allegations made in the affidavit while contending that the petitioner and its predecessor M/s. Indian Express never in possession and

enjoyment of the property admeasuring 5000 sq. yards bearing municipal No.1-2-529 to 571 and the same was upheld in O.S.No.1062 of 1980 and O.S.No.579 of 1993 and thereby the question of appointing commissioner to make local inspection to decide the exact area in occupation of the respondents is not maintainable and the relief sought for in this petition would amount to gathering evidence and prayed for dismissal of the petition.

7. Upon hearing the arguments of both the learned counsel, the trial Court observed that the commissioner cannot be appointed to decide the exact area in occupation of the respondents since it amount to gathering evidence.

8. Aggrieved by the order passed by the trial Court, the present revision is filed under Article 227 of the Constitution of India raising several contentions. The grounds urged in the revision petition is nothing but reiteration of allegations made in the affidavit filed along with the petition under Order 26 Rule 9 r/w 151 of C.P.C. Therefore, I need not repeat those grounds urged in the revision again.

9. During hearing, the learned counsel for the petitioner contended that as the dispute is with regard to physical features, a commissioner is required to be appointed and appointment of commissioner is only to elucidation of facts, enabling the Court in arriving at just conclusion to decide the controversy between the parties. Therefore, he sought for appointment of advocate commissioner.

10. Ms.T.V.S. Laxmi, learned counsel for the respondents supported the order passed by the trial Court in all respects while reiterating the contentions that the commissioner cannot be appointed to collect evidence since the petitioner is claiming possession of the property as on the date of filing the suit and it is for the petitioner to prove lawful possession as on the date of filing of suit in view of the limited scope of trial in a suit for bare injunction and therefore, prayed for dismissal of revision.

11. Before going to solve the real controversy between the parties to appoint the advocate commissioner and illegality of the order, it is necessary to discuss about the scope and jurisdiction of this Court under Article 227 of the Constitution of India.

12. Since the powers of this Court under Article 227 are limited, this Court cannot exercise such power and the duty of this Court is to see that the Courts shall not exceed its power that conferred on it or exercise power based on extraneous material to pass any order and to keep the subordinate courts within its bounds of jurisdiction.

13. This Court while exercising power under Article 227 can exercise its discretion to interfere in the following circumstances:

- a) When the inferior court assumes jurisdiction erroneously in excess of power.*
- b) When refused to exercise jurisdiction.*
- c) When found an error of law apparent on the face of record.*
- d) Violated principles of natural justice.*
- e) Arbitrary or capricious exercise of authority or discretion.*

- f) Arriving at a finding which is perverse or based on no material.*
- g) A patent or flagrant error in procedure.*
- h) Order resulting in manifest injustice.*
- i) Error both on facts and law or even otherwise.*

14. Similarly, the Court cannot exercise its discretion under Article 227 of the Constitution of India:

- a) Where the only question involved is one of interpretation of deed;*
- b) On question of admission or rejection of particular piece of evidence, even though the question may be of everyday recurrence;*
- c) To correct erroneous exercise of jurisdiction, as a Court of revision;*
- d) To set aside an intra vires finding of the fact, except where it is founded on no material or is perverse;*
- e) to correct an error of law, not being an error apparent on the face of the record;*
- f) to interfere with the intravires exercise of discretionary power, unless it is violative of principles of natural justice;*
- g) The Court shall not interfere on a merely technical ground which would not advance substantial justice.*

15. Article 227 deals with power of superintendence by the High Court over all Subordinate Court and Tribunals. The power of superintendence conferred upon the High Court by Article 227 is not confined to administrative superintendence only, but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law, rather power under this Article is wider than that of Article 226 in the sense that it is not subject to those technicalities of procedure or traditional fetters which are to be found in *certiorari* jurisdiction and such power can also be exercised *suo motu*.

16. It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in “State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afsan Guru¹”, that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts, only in certain circumstances.

17. In view of the law laid down by the Apex Court, this Court cannot exercise its power under Article 227 of the Constitution of India though the order is wrong, since the power can be exercised only to keep the subordinate Courts and Tribunals within its bounds.

18. As per the law declared by the Apex Court, even if the order passed by the trial Court is not in accordance with law, the court cannot interfere with such finding while exercising power under Article 227 of the Constitution of India which is supervisory in nature. The main aim is only to keep the courts and tribunals which are under the control of the High Court within its jurisdictional limits, as held by the Apex Court. In view of limited jurisdiction of this Court, I would like to examine the real controversy between the parties.

19. It is clear from the affidavit filed along with the petition by the petitioner that there was prior litigation between the parties and their predecessor in title, more particularly in O.S.No.1062

¹ 2003 (6) SCC 641

of 1980 wherein the Court observed that the respondents are in possession and enjoyment of the property but declined to grant perpetual injunction on the ground that the respondents did not seek declaratory relief in the suit as it lead to complications. Therefore, the finding of the Court in O.S.No.1062 of 1980 attained finality and even according to those findings, the respondents were in possession of the property prima facie. The main contention of the present petitioner is that the respondents are trying to encroach the common areas i.e. left for roads, footpaths, pathways and the open area in the suit property. If really, the petitioner intends to prevent the respondents from encroaching the footpaths etc. referred supra, the remedy open to the petitioner is to obtain an injunction order under Order 39 Rules 1 and 2 C.P.C. restraining the respondents from encroaching the footpaths etc. referred supra. But, appointment of commissioner to find out what is the exact area of property in occupation of the respondents is directly amounts to collection of evidence. Therefore, the relief claimed under the petition is misconceived in a suit for bare injunction as the respondents did not dispute the physical features but claimed that the respondents are in possession and enjoyment of the entire property in view of the findings recorded by the trial Court in O.S.No.1062 of 1980 and it is a subject matter of dispute to be decided at the conclusion of the trial but if for any reason, the commissioner is appointed to decide as to the exact area in possession of the respondents, it amounts to deciding the real controversy in the main suit i.e. decision as to who is in lawful

possession of property as on the date of filing of the suit. Therefore, it is premature to come to such a conclusion and appointment of advocate commissioner in such suit would virtually amounts to deciding the possession of the petitioner which is the outcome of the suit after full fledged trial. In such circumstances, there is no need for appointment of advocate commissioner for collection of such evidence to find out the exact area of property in possession of the respondents in view of decisions reported in (i) *SAGI VIJAYA RAMACHANDRA RAJU AND OTHERS v. KOPPISETTI SATYANARAYANA AND OTHERS*², (ii) *BATCHU NARAYANA RAO v. BATCHU VENKATA NARASIMHA RAO*³, (iii) *KODURU SESA REDDY v. GOTTIGUNDALA VENKATA RAMI REDDY AND OTHERS*⁴, and (v) *YENUGONDA BAL REDDY v. MANEMMA AND OTHERS*⁵. In all the above four judgments, this Court consistently held that appointment of advocate commissioner, in a suit for declaration of title and permanent injunction or in a suit for injunction simplicitor, to note down physical features amounts to collection of evidence. The trial court relying on various judgments rightly concluded that the advocate commissioner cannot be appointed to know the exact area in occupation of the respondents to collection of evidence.

20. Hence, I find no ground in exercising jurisdiction under Article 227 of the Constitution of India to interfere with the

² 2009(6) ALT 353 = 2009(5) ALD 459

³ 2010 (5) ALD 83

⁴ 2006(1) ALD 372

⁵ 2011(3) ALT 232

impugned order under challenge. Consequently, the revision is liable to be dismissed.

21. In the result, the civil revision petition is dismissed. However, the petitioner is given liberty to renew his request if there are any changed circumstances after passing of this order. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:01.06.2017
Ccm



HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CIVIL REVISION PETITION No.1357 of 2017

Date:01.06.2017

ccm