

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.1828 of 2017

ORDER:

This Civil Revision Petition is filed by the petitioner under Article 227 of Constitution of India, challenging the order, dated 27-02-2017 passed in I.A.No.63 of 2015 in O.S.No.633 of 2015 by the XXII Junior Civil Judge, City Civil Court, Hyderabad, declining to direct the Commissioner to take measurements of the property in terms of the order passed by this Court in C.R.P.No.3575 of 2015, dated 17-12-2015.

The petitioner filed an application for appointment of Advocate Commissioner to take measurements of the schedule property with the help of title deeds etc., the Court accordingly passed an order appointing Advocate Commissioner and when the matter is carried to this Court in revision this Court modified the order observing as follows:

“... .. The noting down of physical features of both the properties involved some measurements also. Merely because the Advocate Commissioner mentions the dimensions of the physical features of the property, it does not mean that the suit is settled.

In the circumstances, this Court sees no ground to interfere with the same except observing that the Advocate Commissioner so appointed shall not take the aid of the title deeds and measures the properties, but he shall only note down the physical features of the properties as existing on the ground.”

Taking advantage of these observations in the earlier paragraph and later paragraph, learned counsel for the petitioner/defendant contended that the intention of the Court is to prevent the Commissioner to take measurements existing on the ground as on the date of his inspection while noting down the physical features of the property. But curiously the petitioner filed C.R.P.M.P.No.2051 of 2016, which ended for dismissal by order, dated 22-04-2016. Therefore, the operative portion of the order is clear that the Advocate Commissioner shall not take aid of the title deeds and measure the property, it means that the Commissioner is not required to take measurements of the property but the earlier observation in the earlier paragraph is not part of the direction issued by the Court and it is only an observation of the Court. Therefore, the Court issued direction to the Commissioner strictly adhering the direction issued in C.R.P. and accordingly, he filed report after its execution of the warrant but the petitioner filed objections pointing out failure of the Commissioner to note down the measurements existing on the ground but this contention was turned down on the ground that the Commissioner executed the warrant in terms of directions issued by this Court in C.R.P.

Now, it is the contention of the petitioner that unless the measurements were taken on ground, it is difficult to decide the suit and requested this Court to direct the Commissioner to take measurements of the schedule property existing on the ground. Undisputedly, the suit was filed for permanent injunction and the relief claimed in the plaint in paragraph No.7(i) is as follows:

“i) That the Hon’ble Court may be pleased to pass Judgment and Decree in favour of the plaintiff and against the defendant restraining him and his labors, workers etc., from interfering, demolishing, the southern side common wall of plaintiff house bearing No.181, EWS, H.No.17-1-376/538, new Santoshnager Colony, Santoshnager, Hyderabad, perpetually.”

As seen from the relief claimed in the plaint, the plaintiff sought for only perpetual injunction against the defendant and his men demolishing with the construction of the Southern wall. At best, the Court is required in a suit for injunction simplisitor, whether the southern wall is in existence and whether the defendants made any attempt to infringe and invade the legal right of the plaintiff. If the Court find in infirmities, the Court can grant permanent injunction and the remedy open to the petitioner/defendant is otherwise and they cannot forcibly remove the wall.

The contention of the petitioner is that both parties are claiming encroachment but such encroachment cannot be decided in a suit for injunction simplisitor since the

scope of trial is limited as stated above. Therefore, taking measurements of the construction on the ground and noting down physical features includes taking measurements is not correct and when this Court specifically issued a direction extracted above, the trial Court is not expected to issue such direction to the Commissioner to take measurements existing on the ground and the trial Court issued direction totally inconsonance with the operative portion of the order in C.R.P.No.3573 of 2015 and failure to take measurements on this ground is not an irregularity in execution of warrant. Therefore, the trial Court has rightly rejected the objection keeping in mind the nature of claim in suit and limited scope of the trial, therefore, the order passed by the trial Court does not call for interference by this Court, while exercising jurisdiction under Article 227 of Constitution of India and consequently, the petition is devoid of merits and deserves to be dismissed.

Accordingly, the Civil Revision Petition is dismissed at the admission stage. There shall be no order as to costs. The Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

July 21, 2017
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