

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**CIVIL REVISION PETITION No.1480 OF 2013****ORDER:**

This Civil Revision Petition is filed against the order dated 18.03.2013 passed in I.A.No.40 of 2013 in O.S.No.941 of 2008 on the file of the Court of I Additional Junior Civil Judge, Nellore.

The brief facts of the case according to the petitioner are as follows:

The petitioner herein is plaintiff No.2 in the suit. He filed the suit i.e. O.S.No.941 of 2008 on the file of the Court of I Additional Senior Civil Judge, Nellore for grant of perpetual injunction. The evidence of the plaintiff was closed and the matter was coming up for defendants evidence. At that point of time, I.A.No.40 of 2013 was filed by the 1st respondent herein under Order XVI Rules 1 and 6 of CPC to summon the Commissioner, Nellore Municipal Corporation and to cause production of documents i.e., Layout plan in L.P.No.232 of 1988 of Dwaraka Real Estates, Nellore approved by the Director of Country and Town Planning, Hyderabad and Revised Layout Plan in L.P No.27 of 1995 of Dwaraka Real Estates, Nellore approved by the Director of Country and Town Planning, Hyderabad. The petitioner herein stated that the said documents which are sought to be summoned from the Municipality were already filed in the Court and it is for the Court to verify as to whether there is any revision of plan or not as contended by the plaintiffs in the suit. It was also stated that the revision of the layout was done by the Director, Country and Town Planning, Hyderabad and as such the Municipal Authorities have

no authority to speak about those documents and that the said petition was filed only to drag on the proceedings.

In the I.A.No.40 of 2013 in O.S.No.941 of 2008 which was filed by the 1st respondent herein, it is stated that he has specifically denied the contention that the layout in L.P.No.232 of 1988 was revised by the Director of Country and Town Planning as LP No.27 of 1995. It is stated that to resolve this aspect and to assist the Court in arriving a just decision it is necessary to examine the said authority in whose possession the earlier layout plans and the alleged revised layout plans are available.

Counter affidavit has been filed in the said I.A by the 2nd plaintiff who is the petitioner herein, stating that the said I.A is not maintainable as the documents which are sought to be summoned were already marked and that the petition was filed only to prolong the matter and prayed to dismiss the said I.A.

Heard.

I.A.No.40 of 2013 in O.S.No.941 of 2008 was allowed on 18.03.2013 observing as follows:

“In this case also the petitioner not mentioned that the information which the petitioner is seeking to elicit is within the exclusive knowledge of the Commissioner. Hence, this Court opined that instead of issuing summons to the Commissioner directly order that the Commissioner, Municipal Corporation is directed to depute Assistant City Planner, Nellore to give evidence in this case and to cause production of layout plans as sought in the petition.

In the result, the petition is allowed. Issue hand over summons to the Commissioner, Nellore Municipal Corporation directing to depute the Assistant City Planner to give evidence and cause production of copy of L.P.No.232/1988 and Revised layout plan No.27/1995 of

Dwaraka Real Estates, Nellore as approved by Director of Town and Country Planning on payment of process.”

The C.R.P came up for admission on 18.04.2013 and notice before admission was ordered on that day. Interim stay of all further proceedings in O.S.No.941 of 2008 on the file of the Court of the I Additional Senior Civil Judge, Nellore, was also granted on the same day.

As disputed questions are there, the learned trial court instead of issuing summons to the Commissioner directly directed the Commissioner, Municipal Corporation to depute the Assistant City Planner, Nellore to give evidence in the case and to cause production of the documents. No prejudice is caused to the petitioner herein, if the Assistant City Planner, Nellore gives evidence in the case and causes the production of the layout plans. The main contention of the petitioner is that I.A.No.40 of 2013 was filed only to drag on the proceedings, since the documents which are sought to be marked are already on record.

In view of the facts stated herein above, the order of the learned trial Court cannot be stated to suffer from any infirmity so as to call for interference by this Court in a petition filed under Article 227 of the Constitution of India. Consequently, this Court is not inclined to interfere with the order impugned in the revision petition.

In the result and for reasons stated above, the instant revision petition is found to be devoid of any merits and accordingly, the same is dismissed. However, as the suit is of the year 2008, the learned trial Court is hereby directed to dispose of the same as early as possible preferably within a period of three

months from the date of receipt of copy of the order. No order as to costs.

Consequently, Miscellaneous petitions, if any pending, shall stand closed.

KONGARA VIJAYA LAKSHMI,J

Date:27.10.2017.
Gk.



HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

CIVIL REVISION PETITION No.1480 OF 2013

Date:27.10.2017

Gk

