

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION NO. 5318 OF 2016

ORDER:

This civil revision petition is filed under Section 227 of the Constitution of India by the petitioner challenging the order dated 19.09.2016 in I.A.No.720 of 2015 in I.A.No.688 of 2015 in O.S.No.175 of 2014 passed by the V Additional District Judge, Medak at Sangareddy.

Initially, the petitioner filed I.A.No.402 of 2015 in O.S.No.175 of 2014 under Order XXXIX Rule 1 & 2 of CPC r/w 151 of CPC and obtained ad-interim injunction order on 22.06.2015 restraining the respondent from making any construction or changing the nature of suit schedule land in Sy.No.6, admeasuring Ac.5.00 gts out of total extent admeasuring Ac.11.25 gts situated at Patelguda village, Patancheru Mandal, Sangareddy Taluq, Medak District.

The respondent filed I.A.No.720 of 2015 in I.A.No.688 of 2015 in O.S.No.175 of 2014 for appointment of Advocate Commissioner to note down the physical features and also to know whether there are any changes in the existing physical features of the suit schedule property in Sy.No.6, admeasuring Ac.5.00 gts out of total extent admeasuring Ac.11.25 gts situated at Patelguda village, Patancheru Mandal, Sangareddy Taluq, Medak District, on the ground that the revision petitioner herein made a serious allegation that the respondent violated the interim order and sought for police protection. But, whereas, the petitioner raised a contention in I.A.No.688 of 2015 that the property was sold and he converted agricultural land into non-agricultural land and sold Ac.9.00 gts of

land under various registered sale deeds and the purchasers obtained lay out from the concerned authorities and divided the same into residential plots, sold the same to various persons who constructed residential houses in Ac.9.00 gts of land, whereas the respondent retained only Ac.2.23 gts. Therefore, the question of violation of injunction order does not arise. To find out the stage of constructions in the said property, the respondent sought for appointment of Advocate Commissioner to note down physical features i.e. existing constructions of property of Ac.9.00 gts and nature of land of an extent of Ac.2.23 gts. The revision petitioner disputed the same on the ground that the constructions took place after obtaining interim order from the Court and that there are no grounds to appoint an Advocate Commissioner to note down the physical features in the existing property.

The V Additional District Judge, Medak at Sangareddy while holding that there are no grounds to provide police protection by exercising power under Section 151 C.P.C, curiously allowed I.A.No.720 of 2015 filed under Order XXVI Rule 9 of C.P.C to appoint Advocate Commissioner.

The said order I.A.No.720 of 2015 is now under challenge before this Court on various grounds. I need not advert to the grounds once again, in view of my discussion in the earlier paragraphs. Moreover, the Trial Court having found no ground to grant police protection and by exercising power under Section 151 C.P.C ought not to have allowed the petition filed under Order XXVI Rule 9 of C.P.C to make local inspection, since the Court itself found no ground to provide police protection. At best, the purpose of filing the petition is only to establish that the constructions were in

existence or partly constructed or completed, even before the alleged violation as complained by the petitioner. Since there were no strong grounds, the Trial Court dismissed the petition.

The initial burden is upon the petitioner who filed a petition under Section 151 C.P.C and if the petitioner discharges his initial onus of proof, the burden will shift on to the respondent. Even, he is required to establish that there exist constructions even prior to grant of temporary injunction under Order XXXIX Rule 2 C.P.C. When once the petitioner failed to establish a strong ground for providing police protection, the question of the respondent proving his positive case does not arise. Therefore, I am of the view that the order passed in I.A.No.720 of 2015 in I.A.No.688 of 2015 in O.S.No.175 of 2014 the Trial Court is erroneous and committed an error apparent on the face of record, which calls for interference by this Court. Hence, the order passed by the Trial Court in I.A.No.720 of 2015 in I.A.No.688 of 2015 in O.S.No.175 of 2014 is hereby set-aside, as it is unnecessary to appoint an Advocate Commissioner, in view of dismissal of I.A.No.688 of 2015 in O.S.No.175 of 2014.

In the result, C.R.P.No.5318 of 2016 is allowed, by setting aside the order in I.A.No.720 of 2015 in I.A.No.688 of 2015 in O.S.No.175 of 2014 dated 19.09.2016.

Consequently, miscellaneous applications pending if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Dated: 15.02.2017

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