

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.4510 of 2017

ORDER:

This civil revision petition under Article 227 of the Constitution arises out of the order dated 19.12.2016 passed by the learned VII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, in I.A.No.1238 of 2015 in O.S.No.1341 of 2006. The said I.A. was filed by the petitioner herein, being the plaintiff in the suit, under Order 26 Rule 9 CPC for appointment of an Advocate-Commissioner to inspect the plots in the suit schedule property and to note the encroachments made on its western side and submit a report. By the order under revision, the trial Court dismissed the I.A. Aggrieved thereby, the plaintiff is before this Court.

Heard Dr.Venkat Reddy Donthi Reddy, learned counsel for the petitioner/plaintiff, and Sri T.Srikanth Reddy, learned counsel for the respondents/defendants.

O.S.No.1341 of 2006 was filed for a declaration that the plaintiff was the absolute owner and possessor of the suit schedule property; to direct the defendants to remove the compound wall constructed by them therein; to restore it to its former condition; and to deliver the actual physical possession thereof to the plaintiff. The suit schedule property comprised Plot Nos.3 and 4 in Survey No.30 part, each admeasuring 300 square yards, situated in Mansoorabad Village, Saroornagar Mandal under L.B.Nagar Municipality, Ranga Reddy District.

Though Dr.Venkat Reddy Donthi Reddy, learned counsel, would point out that the trial Court failed to take note of the prayer

in the I.A. and was misled by the contents of para 3 of the supporting affidavit and that the petitioner/plaintiff only sought appointment of an Advocate-Commissioner to inspect the plots and to note the encroachments, if any, made on the suit schedule property. This Court is however of the opinion that as the suit is not for a mere injunction and the petitioner/plaintiff sought declaration of her title, the factum of encroachments, if any, made by the defendants thereon does not require to be determined through an Advocate-Commissioner.

If the petitioner/plaintiff succeeds in establishing her entitlement for declaration of her title over the suit plots, irrespective of whether or not she demonstrates that an encroachment has been made thereon by the defendants, she would be entitled to the consequential relief of delivery of the suit plots over which her title is declared by removing the encroachments, if any, made thereon by the respondents/defendants. It would therefore be wholly unnecessary for an Advocate-Commissioner to examine as to whether the respondents/defendants have made any encroachments as alleged by the petitioner/plaintiff at this stage.

The civil revision petition is accordingly dismissed subject to the above observation. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR,J

Date:06.10.2017
PGS/GJ