

THE HON'BLE SRI JUSTICE A.V. SESA SAI

CIVIL REVISION PETITION No. 2682 OF 2017

ORDER:

The order dated 30.03.2017, passed by the III Additional District and Sessions Judge (FTC), Anantapur in I.A.No.81 of 2017 in O.S.No.45 of 2014, is under challenge in the present Revision filed under Article 227 of Constitution of India.

Heard the counsel for the petitioner and perused the material available on record.

Petitioners herein instituted the above said suit for specific performance of agreement of sale dated 20.10.2010. In the said suit, the plaintiffs/petitioners filed I.A.No.81 of 2017, under the provisions of Order XXVI Rule 13 read with 151 of Code of Civil Procedure, seeking appointment of Advocate Commissioner to measure petitioners' schedule land along with Mandal Surveyor of B.K.Samudram Mandal and also to note the extent of land with boundaries as mentioned in Ex.A1 and also to note the physical features and to submit a report. The said application was resisted by the defendants/respondents herein by way of filing counter.

Learned Additional District Judge by way of impugned order dismissed the said application, filed by the petitioners herein.

It is contended by the learned counsel for the petitioners that the questioned order is erroneous, contrary to law, besides being opposed to the provisions of Order XXVI Rule 13 of Code of Civil Procedure. It is further contended by the learned counsel that the defendants did not mention the exact availability of schedule property on the ground as mentioned in the said agreement of sale dated 20.10.2010 and the plaintiffs/petitioners herein came to know that the extent of schedule property is less than that of the land mentioned in Ex.A1-suit agreement. Learned counsel further submits that in the event of present application being allowed, the same would not cause any prejudice to the defendants and that on the other hand, it would be helpful for the Court below to arrive at reasonable and just conclusion.

In the above background the question that falls for consideration of this Court is “whether the impugned order warrants any interference of this Court, under Article 227 of Constitution of India and whether the same is sustainable and tenable?

In the affidavit filed in support of the present application, the plaintiffs/defendants herein stated that they came to know that the extent of suit schedule land is less than that of the land mentioned in Ex.A1 suit agreement on ground and that in order to know the exact land available on ground, the schedule property is required to be measured, by appointing an Advocate Commissioner. Opposing the said

application, the defendants/respondents filed a counter stating that present suit is not a suit for declaration or injunction and the scope of the suit is only to decide whether the plaintiffs/petitioners are ready and willing to perform their part of contract, as per the terms and conditions of the agreement and that the plaint does not show the said aspect and that the present application is only to drag on the matter.

A reading of the order under challenge clearly discloses that the learned Judge took note of the facts that the suit was instituted on 18.01.2014 for specific performance of agreement of sale dated 20.10.2010 and the present application was filed on 30.01.2017 i.e., nearly after three years of filing of the suit. Learned Judge categorically recorded a finding that the plaintiffs/petitioners have to prove only whether they are ready to perform their part of contract or not and that even if the land is less as contended by them, at the time of registering the property, the property can be measured, if necessary and this is not the stage for measuring the property. Learned Judge also noted that so far neither the plaintiffs completed the evidence on their side nor deposited at least the major portion of balance of sale consideration into Court. Court below also noted that there is no pleading in the plaint regarding non-existence of the land as per the measurements mentioned in Ex.A1. Court below also took note of the aspect that for nearly 3½ years, petitioners have not completed the process of adducing the

evidence on their side. It is settled principle of law that in the absence of any perversity or jurisdictional error, Revision under Article 227 Constitution of India is not maintainable. In the instant case, this Court does not find any such perversity or any jurisdictional error in the order impugned as such, this Court is not inclined to meddle with the well articulated order passed by the Court below.

For the aforesaid reasons, this Revision is dismissed.
No order as to costs.

Miscellaneous petitions pending consideration, if any, in the Civil Revision Petition shall stand closed in consequence.

28.07.2017
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A.V.SESHA SAI, J