

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.5619 of 2016

ORDER:

This Civil Revision Petition under Section 227 of the Constitution of India is filed challenging the Order dt.29.09.2016 in I.A.No.725 of 2016 in O.S.No.85 of 2010 passed by the Judge, Family Court-cum-VII Additional District and Sessions Judge, Medak at Sanga Reddy whereunder petition was filed under Order XXVI Rule 1 read with Section 151 of CPC to appoint an Advocate Commissioner to conduct survey and demarcation of the lands in Sy.No.165 and 16 with the help of the Assistant Director, Survey and Land Records, Medak District at Sanga Reddy.

2. It is the contention of the petitioner that he is the owner of the land in Sy.No.165 and alleged that the respondents encroached the land of the petitioner and raised construction. But, curiously in Clause (iii) of the relief prayer in the plaint, one of the relief claimed by the petitioner is as follows:

“Direct the authorities of survey and land records to demarcate and fix the boundaries of Sy.Nos.165 and 166 of Ameenpur village.”

3. The relief claimed in the present revision petition is identical to the relief in Clause (iii) of the prayer portion of the plaint.

4. In Haryana Waqf Board Vs. Shanti Sarup & Ors¹, it was held that the Court cannot appoint an Advocate Commissioner to demarcate the property. As one of the reliefs claimed in the plaint is to demarcate the property and fix boundaries, such appointment would amount to grant of pre-trial decree.

5. This Court in Sarala Jain and others v. Sangu Gangadhar and others² held that to consider the appointment of advocate commissioner under Order 26 Rule 9 CPC, the Court has to take into consideration the total pleadings of both parties, relief claimed in the suit and the grant of relief for appointment of Advocate Commissioner shall not amount to grant pre-trial decree and necessity to appoint an Advocate Commissioner to decide the real controversy between the parties.

6. In view of the above, no further finding is required as this point is already covered by judgment of this Court.

7. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

¹ (2008) 8 SCC 671.

² 2016(3) 132

As a sequel, miscellaneous petitions, if any, pending in this petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:24-03-2017
ccm



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