

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.1554 of 2016

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India challenging the order dated 28.9.2015 in E.A.No.118 of 2015 in E.A. No.176 of 2014 in E.P. No.1 of 2012 in O.S. No.68 of 2003 on the file of the Court of Senior Civil Judge, Chirala.

2. Heard the learned counsel for the petitioners and the learned counsel for the first respondent. In the cause title, it is mentioned that respondent Nos.2 to 8 are not necessary parties.

3. The petitioners are claimants, first respondent is decree holder and respondent Nos.2 to 8 are judgment debtors.

4. The contention of learned counsel for the petitioners is two fold: (1) the trial court dismissed the petition on erroneous grounds; and (2) the delivery of property is not possible without determining the extent of E.P. schedule property. ***Per contra***, learned counsel for the first respondent submitted that there is no dispute with regard to the identity of the E.P. schedule property and in such circumstances; appointment of Advocate Commissioner to measure the extent of E.P. schedule property is not warranted. He further submitted that there is no illegality or irregularity in the order of the trial court, which warrants interference of this court.

5. A perusal of the record reveals that the first respondent filed O.S. No.68 of 2003 on the file of the Court of Senior Civil Judge, Chirala against respondent Nos.2 to 8 for declaration and recovery

of the possession of the suit schedule property. Respondent Nos.2 to 8 have filed O.S. No.12 of 2007 on the file of the Court of Senior Civil Judge, Chirala against the first respondent for perpetual injunction. The trial court clubbed both the suits and recorded the common evidence. After affording reasonable opportunity to both parties, the trial court, by common judgment dated 31.5.2008, decreed O.S. No.68 of 2003 and dismissed O.S. No.12 of 2007, aggrieved by which, the judgment debtors preferred A.S. No.69 of 2008 and A.S. No.70 of 2008 on the file of the Court of Additional District Judge, Ongole. The appellate court dismissed both the appeals. Feeling aggrieved by the judgment and decrees in A.S. Nos.69 and 70 of 2008, respondent Nos.3, 5, 6 and 7 preferred S.A.Nos.610 and 611 of 2012. This Court dismissed both the second appeals on 22.1.2013.

6. At the time of arguments, learned counsel for the first respondent submitted that feeling aggrieved by the judgment and decrees in S.A.Nos.610 and 611 of 2012, respondent No.3 filed Special Leave Appeal (Civil) Nos.13066 and 13067 of 2013 before the Hon'ble apex Court and the same were dismissed on 26.7.2013.

7. During the pendency of second appeals, first respondent filed E.P. No.1 of 2012. The petitioners-claimants filed E.A. No.176 of 2014 under Order XXI Rule 97 of CPC and the same is pending. Pending E.A. No.176 of 2014, the petitioners filed E.A. No.118 of 2015 under Order XXVI Rule 9 of CPC for appointment of Advocate Commissioner for the purpose of measuring the E.P. schedule

property. The Executing Court, by the order under challenge, dismissed E.A. No.118 of 2015. Hence, this revision.

8. It is the contention of the learned counsel for the petitioners that the E.P. schedule property is an extent of Acs.0.08 cents and not Acs.0.12½ cents as claimed by the first respondent.

9. I have carefully perused the schedule mentioned in E.P. No.1 of 2012 in order to appreciate rival contentions. As per the recitals of the E.P., the suit schedule property is an extent of Acs.0.12½ cents situated in T.S.No.46 of Perala Village of Chirala Municipality bounded by – East: Road, South: Singiresu Lakshmi Kantham, West: Yadam Peda Rosaiah and others, and North:Duggi Subrahmanyam and other. It is the case of the first respondent that total extent of E.P. schedule property is Acs.0.12½ cents. It is the case of the petitioners that they are the tenants of E.P. schedule property to an extent of Acs.0.08 cents.

10. It is a settled principle of law that no Advocate Commissioner can be appointed for the purpose of collection of evidence. It is needless to say that an Advocate Commissioner can be appointed to note down the physical features of the property or for localization of the suit schedule property. It is not the case of the petitioners that there is dispute with regard to identity of the E.P. schedule property. The petitioners also are not disputing the boundaries of the E.P. Schedule property. Whether the E.P. schedule property is Acs.0.12½ cents or Acs.0.08 cents is not a matter to be decided by Executing Court. The Executing Court cannot go beyond the scope of the decree. It is not the case of the

petitioners that the suit was not decreed for an extent of Acs.0.12½ cents in R.S. No.46 of Perala Village of Chirala Municipality. Absolutely there is no dispute with regard to identity of the property. If this court expresses any opinion with regard to the rights of the petitioners, the same may cause prejudice to the petitioners in view of pendency of E.A. No.176 of 2014. Whether the petitioners are having any right over the E.P. schedule property or not will be decided in E.A. No.176 of 2014. The possibility of filing this type of petitions in order to drag on the proceedings cannot be ruled out completely. When there is no dispute with regard to identity of the property, there is no need to appoint Advocate Commissioner. The trial court has considered all the necessary aspects in right perspective and dismissed E.A. No.118 of 2015. While exercising the jurisdiction under Article 227 of the Constitution of India, this court cannot lightly interfere with the order passed by the trial court unless there is illegality or irregularity apparent on the face of the record. Viewed from factual or legal aspects, there is no illegality or irregularity in the order passed by the trial court.

11. Accordingly, the civil revision petition is dismissed. Miscellaneous petitions, if any pending in this civil revision petition, shall stand closed.

T.SUNIL CHOWDARY, J

Date: 23.1.2017.

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