

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.5647 OF 2017

O R D E R

The petitioner is the plaintiff in O.S.No.978 of 2009 on the file of the learned VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar. He filed I.A.No.96 of 2017 therein under Order 26 Rule 9 CPC seeking appointment of an Advocate Commissioner for the purpose of survey and demarcation of the suit schedule property along with the land pertaining to his wife with the assistance of the Survey and Land Records Officials for the purpose of better adjudication. By order dated 30.03.2017, the trial Court dismissed the I.A. Hence, this civil revision petition under Article 227 of the Constitution.

Heard Sri D.Jagan Mohan Reddy, learned counsel for the petitioner/plaintiff, and Sri Ashok Reddy Kanathala, learned counsel for the respondents/defendants.

Perusal of the order under revision reflects that the trial Court cited two grounds for disallowing the application of the petitioner/plaintiff. Firstly, the trial Court was of the opinion that the application had been filed at the time of arguments and was therefore belated. Secondly, the trial Court opined that appointment of an Advocate Commissioner could not be allowed to fish out evidence to help the plaintiff.

In so far as the first ground is concerned, Sri D.Jagan Mohan Reddy, learned counsel, would point out that after passing of the order, the prayer in the suit itself came to be amended and the matter was reopened for additional evidence. He would therefore state that the first ground no longer constitutes reason enough for the trial

Court to disallow his client's plea. However, this Court is of the opinion that even if the first ground does not survive for consideration, the second ground cited by the trial Court is sufficient to sustain the order under revision.

O.S.No.978 of 2009 was admittedly filed for a perpetual injunction and thereafter amended to include a prayer for a mandatory injunction also. If that be so, the endeavour of the petitioner/plaintiff to get the suit schedule property demarcated along with that of his wife, who is not even a party to the suit proceedings, defies comprehension. Demarcation of the suit property is wholly irrelevant for the purpose of the injunction decrees that the petitioner/plaintiff seeks in the suit. It is for him to prove his possession for the purpose of the perpetual injunction and as the matter is still at the stage of additional evidence in so far as the mandatory injunction is concerned, it is not appropriate for this Court to make any observations in relation thereto. Appointment of an Advocate Commissioner at this stage for the purpose as mentioned by the petitioner/plaintiff would be nothing short of gathering evidence and for a purpose wholly unrelated to the suit claim. The order under revision therefore does not warrant interference.

The civil revision is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

SANJAY KUMAR, J

30th NOVEMBER, 2017

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