

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5904 of 2017

ORDER:

1) The present Civil Revision Petition is filed by the petitioner/ plaintiff under Article 227 of the Constitution of India, aggrieved by the order, dated 21.09.2017 passed in I.A.No.830 of 2017 in O.S.No.75 of 2009 on the file of the Principal Junior Civil Judge, Tuni, wherein and whereunder an application filed under Order 26 Rule 9 and Section 151 C.P.C. seeking appointment of an advocate-commissioner for localizing the joint lane ABCD was rejected.

2) The facts in issue are as under:

The plaintiffs filed O.S.No.75 of 2009 seeking mandatory injunction to remove all constructions made in the plaint ABCD lane and to grant consequential permanent injunction restraining the defendant, his heirs, henchmen and successors from ever interfering with the peaceful enjoyment of the said lane. When the suit was posted for arguments, the plaintiffs filed I.A.No.830 of 2017 seeking appointment of an advocate-commissioner to localize the joint lane ABCD plaint schedule property.

3) A counter came to be filed by the defendant stating that the plaintiffs did not place any record to show that ABCD plaint lane which is existing between the house of the plaintiffs and his house situated on west and the measurement of ABCD plan is east

to west four feet and north to south 102 feet. The petitioner did not file the plan approved by Tuni Municipality to show whether the plaintiffs constructed the house deviating the plan by encroaching the ABCD joint lane or the defendant has encroached the same. In the absence of the approved plan, the plaintiffs have no right to seek appointment of an advocate-commissioner.

4) After considering the rival submissions made, the trial Court dismissed the application. Challenging the same, the present Civil Revision Petition is filed.

5) The learned counsel for the plaintiffs mainly relies upon the order passed by the Lok Adalath showing the existence of some passage ie. a Joint way of plaintiff, defendant and Bandi Samuel. In view of this document, he would submit that it would be just and proper to appoint an advocate-commissioner to localize the joint lane to know the truth whether there were any encroachments. He also took me through the cross-examination of one Medidi Nageswara Rao, who was examined as DW.1, in which he admits that if the Court appoints an advocate-commissioner, truth will come out.

6) Learned counsel for the respondent/defendant would submit that the finding of the Lok Adalath is not binding on the defendant since the defendant was not a party to the said proceedings. He further submits that the plaintiffs filed similar petitions, for the very same purpose, which were rejected. Hence, pleads that there are no merits in the petition.

7) As seen from the record, the Lok Adalat award, which is sought to be relied upon by the plaintiffs, was of the year 1993. The respondent herein was not a party to the said proceedings. Though the award passed by Lok Adalath was available even prior to the filing of the suit, for the reasons best known, the same was not pressed into service, till the case is posted for arguments. The record also discloses that after the evidence of DW.1, two applications came to be filed seeking the very same relief ie. to appoint an advocate-commissioner for localizing the plaint schedule property, which were rejected. After the case is posted for arguments, the present application came to be filed seeking appointment an advocate-commissioner relying on the award of the Lok Adalath passed in O.S.No.219 of 1993, to show that there exists a road and that it would be just and proper to appoint an advocate-commissioner to measure the said area.

8) As stated earlier, no reasons are forthcoming as to why the plaintiffs did not file the said document till date. Learned counsel for the respondents would submit that now both the parties advanced their arguments and the case is posted to 30.11.2017 for judgment, but the learned counsel for the petitioner disputes the same saying that the arguments are not yet advanced.

9) As seen from the record, the suit filed by the petitioner was for mandatory injunction seeking a direction for removal of the encroachments made in the plaint schedule property. Hence, the petitioner has to produce the evidence on record to show the

width of the encroachments. Having regard to the fact that there is any amount of dispute with regard to measurement of the existing passage, more particularly as to whether the said passage is 4 feet or 6 feet width, it would not be proper to appoint an advocate-commissioner at this stage. It is also to be noted here that earlier the petitioner obtained plan from the municipality showing the existence of passage, but for reasons best known, the same was not filed so as to come to the conclusion as to whether any constructions were made by the plaintiffs, deviating from the plan by encroaching on to the lane or whether the defendant has encroached on to the joint lane.

10) For the aforesaid reasons, I see no merits in the revision and the same is liable to be rejected.

11) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

12) Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

27.11.2017
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