

HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.6491 OF 2017

ORDER:

Heard the learned counsel for revision petitioner.

The 1st defendant in the original Suit No.427 of 2017 is the revision petitioner. The revision petitioner filed I.A.No.835 of 2017 for appointment of Advocate Commissioner to demarcate the land in Survey No. 100/A and if necessary its adjoining land to locate an extent of Acs.3-19 gts. in Survey No.100/A and to identify the land covered by Document No.2716 of 1985 and also note down the physical features of suit land with the help of Surveyor. The learned Junior Civil Judge dismissed I.A. No.835 of 2017. Hence the CRP.

The learned counsel for petitioner contends that the reasons assigned by the trial Court are untenable and attract the jurisdiction of this Court under Article 227 of Constitution of India. According to him, identification of property is useful for effective and proper adjudication of the issue between the parties. He vehemently contends that the reasoning given by the trial Court is completely unconvincing and prays for allowing the CRP.

Before advertng to the contentions canvassed by the counsel for petitioner, this Court finds it useful to excerpt the findings recorded by the trial Court which read as follows:

“ The respondent/plaintiff filed the suit for perpetual injunction and for declaration that the gift deed dated 16.3.2005 is null and void and not binding on the plaintiff. A perusal of the entire record shows that the same is coming up for defendants further evidence. On behalf of defendants DW.1 to DW.4 were examined. At this stage

the defendants filed this instant petition. In support of his contention, the petitioner/defendant No.2 relied on a decision in the case of Nambada Varaha Narasimhulu Vs. Karanam Dalamma and others reported in 2014 (6) ALT 94. In the cited case the dispute is in between the parties is that in which survey number the disputed property is located. But whereas in the instant case the dispute is with regard to identification of the land purchased by T.Amarender Rao out of the said land in Sy.No.100/A as per the sale deed and to note down the physical features of suit land. Since the facts of the present case is entirely different with the facts of the case cited by the learned counsel for respondents/plaintiffs.

On a careful reading of the pleadings of both the parties, this court is of the view that appointing advocate commissioner to identify the land purchased by T.Amarender Rao out of the said land in Sy.No.100/A and note down the physical features of suit land is nothing but granting pre-trial decree and only for collection of evidence. In such circumstances the advocate-commissioner cannot be appointed for the said purpose and it will be decided by the court after full-fledged trial and moreover the parties of the suit already adduced elaborate evidence on the issues. Moreover, this is a suit filed in the year 2007 and identified one. In view of the foregoing reasons, I am of the opinion that this petition is devoid of merits and liable for dismissal."

From the above, it is clear that the trial Court refused the prayer of revision petitioner herein for appointment of Advocate Commissioners by taking note of the following circumstances:

- a) the suit is for perpetual injunction.
- b) the burden is on the plaintiff to prove the prima facie case, balance of convenience and irreparable injury.

c) the revision petitioner herein ought not to be allowed to gather evidence the identity of property through commission etc. which are issues and decided by the Court in the full-fledged trial.

d) the parties have already adduced evidence and it is matter for consideration by the Court.

This Court after perusing the order impugned in the CRP is of the view that no ground for entertaining the revision is made out. Hence the revision fails and is dismissed. No order as to costs.

Miscellaneous petitions pending, if any, stand closed.

DATE: 30.11.2017

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S.V.BHATT, J