

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.160 of 2018

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the orders dated 27.10.2017 passed in I.A.No.248 of 2015 in O.S.No.93 of 2010 on the file of Junior Civil Judge Court, Srungavarapukota.

2. Heard the learned counsel for both the parties and perused the material on record.

3. Learned counsel for the petitioner submitted that the trial Court dismissed the petition without considering the relevant aspects. He further submitted that the findings recorded by the trial Court are not sustainable either on facts or in law. Per contra, learned counsel for the respondents submitted that the petitioner filed the present petition at the time of arguments in order to drag on the proceedings. He further submitted that this Court shall not lightly interfere with the discretionary orders passed by the courts below.

4. The point that arises for consideration is:

“Whether there is any illegality, irregularity and impropriety in the impugned order?”

5. Before advertng to the facts, it is not out of place to refer the citations relied on by the learned counsel for the petitioner.

(1) Shaik Zareena Kasam V. Patan Sadab Khan¹

¹ 2011(4) ALD 231

As per the principle enunciated in the case cited supra, mere delay in filing the petition under Order 26 Rule 9 CPC is not a ground to dismiss the same.

**(2) L.N.Peta Primary Agricultural Co-operative Society
V. Government of Andhra Pradesh²**

As per the principle enunciated in the case cited supra, if there is any serious dispute with regard to the identity of the property, the Court can appoint an advocate commissioner; and

(3) Jajula Koteswar Rao V. Ravulapalli Masthan Rao³

As per the principle enunciated in the case cited supra, mere appointment of advocate commissioner to note down the physical features would not amount to collection of evidence.

6. The petitioner filed O.S.No.93 of 2010 on the file of Junior Civil Judge Court, Srungavarapukota, against the respondents for declaration and delivery of plaint 'B' schedule property. After completion of evidence on both sides, the trial Court posted the matter for arguments. At that point of time, the petitioner filed I.A.No.248 of 2015 for appointment of advocate commissioner to measure item Nos.1 and 2 of the plaint schedule property with reference to Ex.A1 sale deed.

7. It is an admitted fact that the petitioner and respondents are neighbouring owners. The petitioner adduced the evidence to substantiate his case so far as alleged encroachment made by the

² 2015(2) ALT 485

³ 2016(1) ALT 134

respondents. The petitioner filed the suit for declaration in respect of plaint 'A' & 'B' schedule properties.

8. This Court carefully perused the schedule. As per schedule, the properties are shown as items 1 and 2. The prayer portion of the suit is not tallying with the schedule. It is not the case of the petitioner that there is a serious dispute with regard to identity of item '2' of the plaint schedule property. The petitioner has mentioned the boundaries and the total extent of item No.2 of plaint schedule. When there is no dispute with regard to the identity of the suit schedule property, the question of appointment of advocate commissioner does not arise. If ultimately the petitioner establishes his case with reference to plaint schedule, certainly he is entitled for the relief of declaration and recovery of possession. The suit is filed in the year 2010. The present application is filed in the year 2015. Whatever pleaded by the respondents is within the exclusive knowledge of the petitioner from the date of filing of written statement. For the reasons best known, the petitioner did not choose to file an application for a period of five years. I am fully agreeing with the submission made by the learned counsel for the petitioner that mere delay in filing the petition under Order 26 Rule 9 CPC is not a ground to dismiss the petition. That does not mean the Court shall allow the petitions filed by the parties to the proceedings without taking into consideration the intention of the party as well as the laches on his part. As observed earlier, the relief portion of the plaint is not correlating with the plaint schedule. It appears, in order to overcome the laches on the part of the petitioner, at the stage of

fag end of the proceedings the petitioner filed the present petition. As rightly observed by the trial Court, filing of this type of petitions at the fag end of the proceedings to drag on the litigation as far as possible cannot be ruled out completely. If the Court fails to curtail this type of applications, there is no end for the litigation. The principle enunciated in the cases cited supra are no way helpful to the petitioner. The trial Court considered the material available on record in right perspective and dismissed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the orders of the trial Court warranting interference of this Court, while exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the petition is liable to be dismissed.

9. In the result, the Civil Revision Petition is dismissed. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Dt:21.12.2018
Rns