

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.5585 OF 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 01.09.2016 passed in I.A.No.138 of 2016 in I.A.No.123 of 2015 in I.A.No.53 of 2015 in O.S.No.18 of 2015 on the file of the Court of the Junior Civil Judge at Narayanpet.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the respondents have filed O.S.No.18 of 2015 against the petitioners seeking perpetual injunction in respect of the suit schedule property. During pendency of the suit, the respondents have filed I.A.No.53 of 2015, under Order XXXIX Rules 1 and 2 read with Section 151 C.P.C., seeking temporary injunction against the petitioners and the same is pending. The respondents also filed I.A.No.123 of 2015, under Order XXVI Rule 9 C.P.C., for appointment of an advocate commissioner to inspect the suit schedule property. The advocate commissioner submitted the report. The petitioners filed I.A.No.138 of 2016, under Section 151 C.P.C., for reissuing the warrant to the previous advocate commissioner. The trial Court dismissed the said petition after affording a reasonable opportunity to both parties. Hence, the revision.

4. Learned counsel for the petitioners submitted that the advocate commissioner has not note down the grave yards of the ancestors of the respondents, which are situated in the petitioners' land. He further submitted that the trial Court, without

considering the material available on record, dismissed the petition on assumptions and presumptions.

5. *Per contra*, learned counsel for the respondents submitted that the petitioners are not entitled to file an application without taking such a plea at the earliest point of time in I.A.No.123 of 2015.

6. The point that arises for consideration is:

Whether there is any illegality or irregularity in the impugned order?

7. The trial Court dismissed the petition on two grounds:

(1) The petitioners have not given any work memo requesting the advocate commissioner to note down the existence of grave yards, and (2) The petitioners have not taken a specific plea in the counter in I.A.No.123 of 2015 about existence of grave yards.

8. It is not the case of the petitioners that the advocate commissioner inspected the suit schedule property behind their back. The record clearly reveals that the petitioners were very much present at the time of inspection of the suit schedule property by the advocate commissioner. For the reasons best known, the petitioners did not choose to give work memo to the advocate commissioner with a request to record the existence of grave yards, if any, in their land. Existence or non-existence of grave yards in the petitioner's land is within their exclusive knowledge as on the date of filing the counter in I.A.No.123 of 2015. This Court carefully perused the counter filed by the petitioners in I.A.No.123 of 2015 line by line in order to appreciate the contention of the petitioners. For the reasons best known,

the petitioners did not take a specific plea in the counter that four grave yards are existing in their land. It is needless to say that the advocate commissioner cannot travel beyond the scope of warrant. There is no direction in the advocate commissioner warrant to verify the existence of grave yards in the land of the petitioners. In such circumstances, the advocate commissioner is justified in submitting his report. After submitting the report by the advocate commissioner, the petitioners have filed a memo before the trial Court as if there is latches on his part. Normally if the advocate commissioner's report is not reflecting to the directions given in the warrant, then there may be some justification for reissuing the warrant. For the reasons best known to the petitioners, they did not take any steps in respect of above factual aspects at the time of filing of the counter or at the time of inspection of the suit schedule property by the advocate commissioner. The findings of the trial Court are based on material much less legally admissible material. 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 or irregularity in the order of the trial Court warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

9. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 09.07.2018

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