

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.265 of 2018

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the orders dated 15.11.2017 passed in I.A.No.1360 of 2017 in O.S.No.82 of 2011 on the file of Principal Junior Civil Judge Court, Puttur, Chittoor District.

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

3. The point that arises for consideration is:

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

4. A perusal of the record reveals that the petitioner filed O.S.No.82 of 2011 on the file of Principal Junior Civil Judge Court, Puttur, against the respondents for perpetual injunction. During pendency of the suit, the petitioner filed I.A.No.230 of 2011 for appointment of an advocate commissioner and the same was allowed. The learned advocate commissioner visited the suit schedule property and filed his report. Later the petitioner filed a petition under Order VI Rule 17 CPC for amendment of plaint seeking mandatory injunction in respect of 'B' schedule property and the trial Court allowed the same. After completion of evidence on both sides, the petitioner filed I.A.No.1360 of 2017 under Order 26 Rule 9 and Section 151 CPC for re-entrustment of the warrant to the previous advocate commissioner to visit the suit schedule property along with surveyor.

5. The respondents filed counter *inter alia* contending that the petition filed by the petitioner is not maintainable either on facts or in law.

6. The trial Court after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

7. It is an admitted fact that the petitioner initially filed the suit for perpetual injunction. Subsequently, the petitioner sought the relief of mandatory injunction in respect of 'B' schedule property. It is the case of the petitioner that during pendency of the suit, the respondents-defendants laid stones and erected poles in the 'B' schedule property. The respondents examined themselves as D.Ws.1 and 2. The trial Court made an observation in the impugned order that in the cross-examination, D.Ws.1 and 2 admitted that they erected poles and stones in the 'B' schedule property. It is not the case of the petitioner that there is a serious dispute with regard to the identity of the 'B' schedule property. If ultimately the suit is decreed in favour of the plaintiff, he is entitled for the relief of mandatory injunction for removal of structures, if any, in the 'B' schedule property. Even if the advocate commissioner is appointed, no purpose will be served in view of the peculiar facts and circumstances of the case. 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.

8. 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

