

HONOURABLE SRI JUSTICE P.NAVEEN RAO

CIVIL REVISION PETITION NO. 318 OF 2018

Date: 13.07.2018

Between:

Nalla Sudarshan Reddy S/o Ram Reddy
Aged about 43 years
Govt Employee
H No 23-6-115/3 New Shayampet,
Near Hunter Road, Hanamakonda Warangal

.....Petitioners

And

Venukanti @ Anukanti Veeralaxmi W/o late Bhadraiah
Age 65 years
R/o Shayampet jagir village Warangal and others

.....Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P.NAVEEN RAO**CIVIL REVISION PETITION NO. 318 OF 2018****ORAL ORDER:**

Petitioner herein is plaintiff. Petitioner instituted O S No. 88 of 2009, pending in the Court of the Principal Junior Civil Judge, Warangal, praying to grant decree of permanent injunction restraining defendants, their agents, workmen etc from interfering with peaceful possession and enjoyment over the suit schedule property. Suit schedule property is open land admeasuring 1190 sq yards in Survey No. 110 wherein compound wall and one room were constructed and municipal house number was obtained. Plaintiff filed I A No. 743 of 2017 under Order XXIX Rule 9 CPC to appoint Advocate Commissioner to note down physical features of the suit schedule property. The said application was dismissed by trial Court. Hence, this revision.

2. Heard learned counsel for petitioner and Sri C A R Seshagiri Rao learned counsel for 4th respondent. None appeared for respondents 1 to 3.

3. According to learned counsel for petitioner, suit schedule property is in square shape with different physical features whereas claim by 4th defendant is that it is in 'L' shape with different physical features and location, and there exists a road on western side and therefore, if physical features are noted down, it would help in proper adjudication of the lis pending in the suit. According to learned counsel by noting down the physical features, no prejudice would be caused to the defendants and the trial Court erred in not accepting the plea to appoint Advocate Commissioner.

4. According to learned counsel for 4th respondent, there is no 20 feet road on the western side of the suit schedule property as claimed by the petitioner. That documentary and oral evidence is available on record to elicit and demonstrate topography, physical features and nature of the suit land. Therefore, no justification is made out to

appoint advocate commissioner, as rightly held by the Court below. According to learned counsel when the suit is at the stage of arguments, present petition is filed to drag on the matter and collect evidence to fill up lacuna and therefore not permissible.

5. On perusal of the documents brought on record, the trial Court noticed that plaintiff claimed to have purchased two different extents of properties and both properties do not form a compact block as boundaries do not match. On going through the record, the trial Court also noticed that contention of the petitioner that property of plaintiff is in square shape is not correct. Trial Court noticed that as documents of the plaintiff are not clear, no purpose would be served by appointing advocate commissioner. Further contention of the plaintiff that a road exist on the western side of the suit schedule property, is also not accepted. The trial Court noticed that photographs placed on record would show damage of compound wall whereas plaintiff claims that this is not a case of damage of compound wall but there exists a road. Trial Court observed that existence of road ought to be proved by the plaintiff through evidence. According to trial Court when identify of the property is not in dispute, there is no reason to appoint advocate commissioner, more so, when property is bounded by compound wall with a room constructed therein and when existence of eastern side lane is admitted.

6. All the issues agitated before the trial Court were thoroughly examined and based on the facts and contentions noted by the trial Court, trial Court was not inclined to exercise its discretion in allowing the petition to appoint advocate commissioner. No case is made out for interfering with well considered order of the trial Court. The revision fails and accordingly dismissed. No costs. Pending miscellaneous petitions shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date: 13.7-2018
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