

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.548 OF 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 30.12.2015 passed in I.A.No.3126 of 2015 in O.S.No.136 of 2008 on the file of the Court of the Principal Senior Civil Judge, Kadapa.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the father of the second petitioner filed O.S.No.136 of 2008 on the file of the Court of the Principal Senior Civil Judge, Kadapa, against respondent Nos.1 and 2 for declaration and recovery of the suit schedule property in Survey No.210/A of Chinna Chowk Village, Kadapa District. During pendency of the suit, the second petitioner along with others filed I.A.No.3126 of 2015, under Section 151 C.P.C., to reopen the suit for the purpose of appointing advocate commissioner. Respondent Nos.1 and 2 filed counter *inter alia* contending that there is no need to appoint advocate commissioner. Basing on the material available on record, the trial Court dismissed the petition. Hence, the revision.

4. The point that arises for consideration is:

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

5. Originally the father of the second petitioner filed O.S.No.136 of 2008 against respondent Nos.1 and 2 for declaration and recovery of the suit schedule property. During pendency of the

suit, father of the second petitioner died. The second petitioner and respondent Nos.3 to 7 were brought on record as plaintiffs. After completion of the evidence on both sides, the petitioner and others filed the present interlocutory application. A perusal of the record reveals that there is no dispute with regard to the identity and boundaries of the suit schedule property. When there is no dispute with regard to the identity of the suit schedule property, question of appointing advocate commissioner does not arise. Advocate commissioner cannot be appointed for collection of evidence. Admittedly, second petitioner sold an extent of Ac.0.19 cents out of Ac.0.43 cents to third parties. Even if advocate commissioner is appointed to measure the suit schedule property, no purpose will be served. The trial Court considered the material available on record in right perspective and arrived at a conclusion that there is no dispute with regard to the identity of the suit schedule property and dismissed the petition. If there is no dispute with regard to identity of the suit schedule property, appointment of advocate commissioner is only futile exercise. The trial Court has assigned reasons much less cogent and valid reasons to its findings. There are no grounds much less valid grounds to reopen the matter for the purpose of appointment of advocate commissioner. There is no illegality, irregularity or impropriety in the impugned order warranting interference of this Court while exercising jurisdiction under Article 227 of the Constitution of India.

6. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

7. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 03.12.2018
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