

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

C.R.P No.757 OF 2018

ORDER:

Heard the learned counsel for the petitioner and Sri V.Sreenivasa Rao and Sri M.Balasubramanyam for the respondents 1 and 2 and Sri B.S.Reddy for the third respondent apart from perusing the material available before the Court.

2. Plaintiff in O.S.No.277 of 2010 on the file of the II Additional Senior Civil Judge, Nandyala, Kurnool District is the petitioner in the present revision filed under Article 227 of the Constitution of India.

3. Petitioner herein instituted the above said suit for declaration of title and possession. The schedule property is an extent of 0.10 cents in Plot Nos.18 and 19 in Sy.Nos.540/A1, 540/A2 of Moolasagaram, Ward No.30, Nandyal Town, Kurnool District.

4. In the said suit, petitioner herein filed the present application I.A.No.797 of 2017 under the provisions of Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure, praying for appointment of a Commissioner to measure or to inspect the suit schedule property as per the approved layout of Nandyal Municipality for filing his report. The said application was contested by the respondents by way of filing counter. The learned Second Additional Senior Civil Judge, Nandyal, by way of an order dated 23.01.2018 dismissed the said application. This revision challenges the validity and the legal sustainability of the said order.

5. According to the learned counsel for the petitioner the questioned order is highly erroneous, contrary to law and opposed to the very spirit

and object of the provisions of Order 26 Rule 9 of the Code of Civil Procedure. It is further contended that the reasons assigned by the learned Judge in the impugned order for dismissing the application are neither sustainable nor tenable in the eye of law and the learned Judge totally ignored the settled principle of law that the Commissioner can be appointed at any stage of the suit. It is also the submission of the learned counsel that if the application of the petitioner is allowed and the Commissioner is appointed, the realities would surface and the same would be helpful to the Court below for arriving at a just and reasonable conclusion.

6. Per contra, it is submitted by the learned counsel for the respondents that there is absolutely no illegality nor there exists any infirmity in the impugned order and in the absence of the same, the questioned order is not amenable for any judicial review under Article 227 of the Constitution of India. It is also further submitted by the learned counsel that the entire effort of the petitioner is to gather the evidence and the application filed by the petitioner is liable to be dismissed on the ground of delay. It is further submitted that in the absence of any dispute as to the identity of the property, the appointment of Commissioner cannot be asked for.

7. The information available before this Court disclose that the petitioner herein instituted the present suit as long back as in the year 2010. It is also not in controversy that the main suit is now coming up for arguments. In the present application petitioner herein is praying for appointment of a Commissioner for the purpose of taking measurements with regard to the schedule property. As rightly pointed out by the learned counsel for the respondents, this Court does not find any dispute as to the

identity of the property or the extent. It is not in dispute that the evidence on behalf of the plaintiffs was closed as long back as on 24.11.2017 and the matter stood posted for arguments. It is also required to be noted that the petitioner herein on 29.11.2017 filed interlocutory applications viz., I.A.No.729/2017, 730/2017 and 754/2017 and the applications were also allowed by the Court below and the PW.1 was recalled for further examination. As rightly observed by the learned Judge the affidavit filed in support of the application does not disclose any information as to the necessity for appointment of the Advocate Commissioner. It is the settled and well established principle of law that unless the order impugned suffers from jurisdictional error or patent perversity, the jurisdiction of this Court under Article 227 of the Constitution of India cannot be permitted to be invoked. This Court, in the present case does not find any such contingency.

8. For the aforesaid reasons, the revision is dismissed. No order as to costs. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:08.06.2018
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Dated: 08.06.2018

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