

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No. 920 OF 2018

ORDER:

This civil revision petition under Article 227 of the Constitution of India is filed challenging the order dated 09-01-2018 in I.A.No. 14 of 2018 in O.S.No. 215 of 2009 on the file of the Court of XII Additional Chief Judge, City Civil Court, Secunderabad (for short, 'the Court below'), filed for appointing an advocate commissioner to note down the physical features of the land admeasuring Ac. 0.27 guntas in survey No. 602 of Lothukunta Village.

2. The respondents-defendants opposed the above application on the ground that advocate commissioner cannot be appointed for collection of evidence except for elucidation of facts under Order XXVI Rule 9 read with Section 75 of the Code of Civil Procedure (for short, 'C.P.C.').

3. The Court below upon hearing argument of both counsel dismissed the application on the ground that the purpose of appointment of advocate commissioner to inspect the property of an extent of Ac. 0.27 guntas in survey No. 602 of Lothukunta Village and to note down its boundaries is only to enable the petitioners to add an additional item to the schedule and it amounts to collection of evidence. Aggrieved by the same, the present revision is filed.

4. At the hearing, learned counsel for the petitioners-plaintiffs contended that even to add an additional item of property to the schedule, the petitioners are required to mention the boundaries and if commissioner is appointed for the purpose of noting down physical features and boundaries of the property, it will enable them to amend the plaint schedule appropriately by adding another item of immovable property to the schedule annexed to the plaint but the Court below

did not consider the main purpose of appointing advocate commissioner and therefore prayed to set aside the impugned order. Whereas learned counsel for the respondents opposed the petition on the ground that commissioner cannot be appointed for collection of evidence, more particularly to verify existence of property on ground.

5. The contention raised in the main petition is that the property of an extent of Ac. 0.27 guntas in survey No. 602 of Lothukunta Village is not in existence and to find out whether the property is in existence or not, the petitioners sought for appointment of advocate commissioner but surprisingly during argument, learned counsel for the petitioners changed his version and contended that only to enable the petitioners to add an additional item to the plaint schedule, he requested to allow the petition by appointing advocate commissioner.

6. The Court below based on the principle laid down in ***Papasani Sankar Reddy Vs. Kandula Hanumantha Reddy and others***¹ declined to appoint advocate commissioner as the purpose for which appointment was sought in the petition amounts to collection of evidence. The main endeavour of learned counsel for the petitioners is to prove that Ac. 0.27 guntas of land in survey No. 602 of Lothukunta Village is not in existence. If that is the purpose, commissioner cannot be appointed since it amounts to collection of evidence. Commissioner is an officer of the Court and none of the parties allowed to take assistance of the Court to prove a fact *i.e.* non existence of Ac. 0.27 guntas in survey No. 602 of Lothukunta Village. Therefore, the Court below rightly dismissed the petition and it warrants no interference of this Court.

7. Learned counsel for the petitioners during argument raised a different contention that to enable the petitioners to add an additional item to the schedule

¹ 2013 (4) ALD 322

annexed to the plaint, they are required to mention the boundaries but this contention also would not stand to any legal scrutiny in view of Order VII Rule 3 of C.P.C. Therefore, I find no ground to set aside the impugned order of the Court below. Consequently, the petition is liable to be dismissed.

8. In the result, the civil revision petition is dismissed. Pending miscellaneous petitions, if any, in this revision petition shall stand dismissed in consequence.

Date: 15-02-2018.
JSK

M.SATYANARAYANA MURTHY, J.

