

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.2502 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 11.04.2017 passed in I.A.No.576 of 2017 in O.S.No.104 of 2012 on the file of the Court of the Senior Civil Judge, Pithapuram.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the petitioners filed I.A.No.576 of 2017 in O.S.No.104 of 2012 to issue summons to the Deputy Inspector of Survey, Revenue Divisional Office, Kakinada Division, to depose evidence. The respondents filed counter *inter alia* contending that no survey was conducted as pleaded by the petitioners; therefore, it is a fit case to dismiss the petition. The trial Court, after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

4. Learned counsel for the petitioners submitted that the trial Court dismissed the petition on the sole ground as if the survey report was not marked. He further submitted that the trial Court failed to consider that examination of the surveyor is necessary to prove the *factum* of conducting of survey.

5. *Per contra*, learned counsel for the respondents submitted that there is no need to examine the surveyor, once survey report was marked. He further submitted that there are no grounds to interfere with the impugned order.

6. The point that arises for consideration in this revision is:

Whether there is any illegality, irregularity or impropriety in the impugned order, which warrants interference of this Court?

7. A perusal of the record reveals that the petitioners filed O.S.No.104 of 2012 on the file of the Court of the Senior Civil Judge, Pithapuram, against the respondents for declaration and recovery of possession in respect of the suit schedule property. After completion of the petitioners' side evidence, the petitioners filed I.A.No.576 of 2012, under Order XVI Rule 5 read with Section 151 C.P.C., to issue summons to the Deputy Inspector of Survey, Revenue Divisional Office, Kakinada Division. The trial Court dismissed the petition on the sole ground that the petitioners have not marked the survey report dated 29.03.2012.

8. To substantiate the argument, learned counsel for the petitioners has drawn the attention of this Court to the chief examination of PW.1. A perusal of the chief examination affidavit of PW.1 clearly reveals that the survey report dated 29.03.2012 was marked as Ex.A.8. The finding of the trial Court that the petitioners have not marked the survey report dated 29.03.2012 is factually incorrect.

9. In order to establish whether the survey was conducted or not, the examination of surveyor is inevitable. The surveyor is the competent person to speak about conducting of survey and preparing of report. The surveyor is the competent person to prove recitals of Ex.A.8. If the petition is not allowed, it may not be possible for the petitioners to establish the stand taken by them. Even if the petition is allowed, the same may not cause any prejudice to the respondents. The *factum* of conducting of survey

on 29.03.2012 undoubtedly throw a light on the controversy involved in the suit. The trial Court, without considering the factual and legal aspects, dismissed the petition on erroneous grounds. If the order of the trial Court is allowed to stand, certainly it would amount to miscarriage of justice. The findings recorded by the trial Court are not sustainable.

10. Taking into consideration the facts and circumstances, this Court is the considered view that it is a fit case to allow the revision.

11. In the result, the Civil Revision Petition is allowed setting aside the order dated 11.04.2017 passed in I.A.No.576 of 2017 in O.S.No.104 of 2012. Consequently, I.A.No.576 of 2017 in O.S.No.104 of 2012 on the file of the Court of the Senior Civil Judge, Pithapuram, is allowed. There shall be no order as to costs.

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

T.SUNIL CHOWDARY, J

Date: 05.10.2018

Note: Issue CC by 12.10.2018

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