

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.1401 of 2018

ORDER:

This civil revision petition is filed by the petitioner-plaintiff under Article 227 of the Constitution of India, assailing the order dated 24.1.2018 passed in I.A.No.406 of 2017 in O.S.No.67 of 2008 on the file of the Court of Principal Junior Civil Judge, Shadnagar.

2. Heard the learned counsel for both the parties.

3. The facts leading to filing of the revision petition are as follows: The petitioner filed O.S.No.67 of 2008 on the file of the Court of Principal Junior Civil Judge, Shadnagar against the respondents seeking perpetual injunction in respect of an extent of 208.33 Sq.yards in survey No.181/P of Farooqnagar Village in Mahabubnagar District. When the suit was coming up for arguments, respondent Nos.1 to 3, who are defendant Nos.7 to 9, filed I.A.No.406 of 2017 under Order XXVI Rule 9 of CPC seeking appointment of advocate commissioner to identify the suit schedule property. The petitioner filed counter *inter alia* contending that the petition is not maintainable under law. The trial Court, after affording reasonable opportunity to both parties, allowed the petition. Hence, the revision.

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

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

5. Previously, respondent Nos.1 to 3-defendant Nos.7 to 9 filed I.A.No.39 of 2009 in O.S.No.67 of 2008 under Order XXVI Rule 9 of

CPC seeking appointment of advocate commissioner to identify the suit schedule property. The trial Court, by order dated 20.9.2010, dismissed the said petition on merits. For one reason or the other, respondent Nos.1 to 3 did not choose to challenge the said order. At the stage of arguments in the suit, respondent Nos.1 to 3 have filed the present petition, for the same relief, and the trial Court, by the impugned order dated 24.1.2018, allowed the petition.

6. The petitioner filed O.S.No.67 of 2008 for perpetual injunction against the respondents. As per the averments made in the plaint, the suit schedule property admeasuring an extent of 208.33 Sq.yards is situated in survey No.181/P of Farooqnagar Village. In a suit for perpetual injunction, the plaintiff has to establish that he has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit.

7. Respondent Nos.1 to 3 have filed the petition for appointment of advocate commissioner to identify the suit schedule property. This Court is unable to understand how respondent Nos.1 to 3 are concerned with identification of the suit schedule property. If the suit schedule property is not identified, the plaintiff may lose his case. The prayer sought in the petition is to survey the land in survey No.183 of Farooqnagar Village. It is an admitted fact that survey No.183 is not the subject matter of the suit. In such circumstances, there is no necessity to survey the land in survey No.183.

8. The trial Court made an observation that the advocate commissioner's report may help the Court to decide the *lis* involved

in the suit. The *lis* involved in the suit is whether the petitioner was in possession of an extent of 208.33 Sq.yards in survey No.181/P as on the date of filing of the suit or not. Even if the advocate commissioner files report in respect of survey No.183, the same is no way helpful to the Court to adjudicate the *lis* involved in the suit effectively. The trial Court, without considering the scope of the suit, allowed the petition. The trial Court has not considered the reasons for dismissal of the earlier petition i.e., I.A.No.39 of 2009 in O.S.No.67 of 2008, dated 20.9.2010.

9. It is needless to say that the Court cannot appoint advocate commissioner to know the real controversy involved in the suit. Respondent Nos.1 to 3 have not assigned any reasons much less cogent and valid reasons for appointment of advocate commissioner. If the impugned order is allowed to stand, it would certainly amount to miscarriage of justice. For the foregoing reasons, this Court is of considered view that it is a fit case to allow the revision petition.

10. In the result, the civil revision petition is allowed, setting aside the order dated 24.1.2018 passed in I.A.No.406 of 2017. Consequently, I.A.No.406 of 2017 in O.S.No.67 of 2008 on the file of the Court of Principal Junior Civil Judge, Shadnagar is dismissed. Miscellaneous petitions if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 05.9.2018

YS