

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Civil Revision Petition No.2712 of 2012

ORDER:

The present Civil Revision Petition is preferred challenging the order dated 14.3.2012 in E.A. No.192 of 2011 in E.P. No.39 of 2009 in O.S. No.393 of 1985 on the file of I-Additional Senior Civil Judge, Visakhapatnam.

2. Challenging the order passed rejecting the request to appoint the advocate-commissioner to note down the physical features and take measurements of the schedule property in which the decree-holder claiming right basing on the decree and also to find out Plot No.58 with the assistance of the Mandal Surveyor, which application filed under Order 26 Rule 9 of C.P.C. was dismissed, the present Civil Revision Petition is filed by the judgment-debtors 3 to 10, among whom judgment-debtor No.8 is no more.

3. The submission of the learned counsel for the petitioners, Sri Kuriti Bhaskara Rao is, that the suit schedule property is not available and not in existence, but the decree-holder, with a view to claim plot No.58, filed the Execution Petition, and, therefore, the executing Court ought to have appointed the Commissioner and ought to have made an attempt to locate the decree schedule property.

4. Learned counsel for the respondent, Sri Ch. Srinivas, resists the request on the main ground that such a relief, which is now sought for before the executing Court was never agitated when the suit was pending nor at the time when the appeal preferred was also

pending, and, therefore, it is impermissible to make such a request as the executing Court cannot go behind the decree, which is settled proposition of law.

5. Looking at the submissions made by the learned counsel for either side, when examined the application filed by the revision petitioners, the request is not only to take measurements and to note down the physical features of the decree schedule property but also to locate Plot No.58 which the petitioners/judgment-debtors now claim that it constitutes the decree schedule property. In fact, to insist the request now made ought to be formidable defence raised in the written statement which appears to be conspicuously absent. Thus, having kept quiet during suit proceedings and also during appeal proceedings and when the judgment-debtors have become unsuccessful even in the first appeal, coming with such request at the stage when execution proceedings are insisted is nothing but to stall and stultify the present execution proceedings. Absolutely, there is no merit in the present Revision Petition. The order under Revision does not suffer from any irregularity.

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

As a sequel thereto, miscellaneous petitions, if any, pending in the Revision shall stand closed.

A. SHANKAR NARAYANA,J

Dt. 21.03.2018

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