

HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CIVIL REVISION PETITION No. 2031 of 2018

ORDER:

This civil revision petition is filed against the order dated 22.11.2017 in I.A.No.191 of 2017 in O.S.No.20 of 2011 on the file of Junior Civil Judge, at Ichapuram (for short, 'the trial Court'). The revision petitioner herein is the 1st defendant, respondents 1 to 3 are the plaintiffs, and respondent No.4 is the 2nd defendant in the suit O.S.No.20 of 2011 before the trial Court.

2. The plaintiffs/respondent Nos.1 to 3 have filed the suit O.S.No.20 of 2011 before the trial Court seeking mandatory injunction and recovery of possession of suit schedule property. The 1st defendant has filed I.A.No.191 of 2017 in the suit under Order 26 Rule 9 of CPC to appoint an Advocate Commissioner to find out whether there is electricity service connection S.C.No.1170 to his Baddi in the suit schedule property, by taking the assistance of Assistant Engineer, APEPDCL, Ichapuram town. The said application was dismissed by the trial Court on the ground that a commissioner cannot be appointed under Order 26 Rule 9 CPC for creation or gathering evidence, and that the 1st defendant has to prove by adducing his evidence that he has got a service connection to his Baddi. Aggrieved by the same, the 1st defendant has filed this civil revision petition.

3. Heard the arguments of learned counsel for the revision petitioner/1st defendant.

4. Learned counsel for the revision petitioner submits that the revision petitioner is the owner of the baddi shop and he is in possession of the property for the past 45

years, and that he has got electricity connection S.C.No.1170 to his shop for the past 34 years, and appointment of an advocate commissioner is required to locate the service connection and, therefore, no prejudice would be caused if an advocate commissioner is appointed in this case.

5. The contention of the petitioner is that there is an electricity connection to his baddi for the past 34 years. If that is the case, he can produce electricity bills paid by him and the correspondence between him and the electricity department to prove that he has got electricity connection to his baddi. The trial Court has rightly dismissed the application for appointment of the commissioner as he is not meant for collecting evidence either for the defendant or the plaintiff.

6. Therefore, there are no valid grounds to interfere with the orders passed by the trial Court. However, the petitioner is given liberty to raise all his contentions before the trial Court and produce relevant documentary and other evidence to prove his contention that he has got electricity connection S.C.No.1170 to his baddi shop for the past 34 years.

7. With these observations, the civil revision petition is disposed of. No costs. Miscellaneous petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J

27th April, 2018
KSM

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