

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.1992 OF 2018

ORDER:

At the admission stage, this civil revision petition is disposed of, as this Court is of the considered view that there is no expediency to order notice to respondents.

2. This civil revision petition is directed at the instance of the plaintiff against the order dated 29.01.2018 in I.A.No.29 of 2018 in O.S.No.55 of 2014, passed by learned Principal Junior Civil Judge, Bhimadole, dismissing the petition filed by the plaintiff under Order 26 Rule X of CPC seeking the court to appoint Advocate Commissioner to measure the schedule property with the assistance of Mandal Surveyor basing on the Pattas of both parties and fix the boundaries in the ends of justice.

3. The trial court dismissed the petition mainly on three grounds. Firstly, that the suit being one for perpetual injunction filed by the plaintiff, the measurement of the respective properties of the parties will not help the court to adjudicate the matter; secondly, that the petition is filed at a belated stage when the matter is coming up for arguments; and thirdly, that for the similar relief when the defendant filed I.A.No.173 of 2017, the same was dismissed on 30.10.2017 and therefore, Advocate Commissioner cannot be appointed, now, at the instance of the plaintiff.

4. Heard learned counsel for petitioner/plaintiff.

5. At the outset, this Court finds no impropriety or perversity in the order impugned. As rightly observed by the trial court, the suit is one for perpetual injunction filed by the plaintiff seeking a decree in respect of two items of landed property as can be seen from the plaint schedule. Therefore, it is expected that the plaintiff would discharge her burden to show that she has been in possession and enjoyment of the suit schedule property as on the date of filing of the suit to deserve a decree for perpetual injunction. In that view of the matter, the measurement of the respective properties of the plaintiff and defendant will not in any way assist the court to adjudicate upon the suit. Therefore, the court's exercise of appointing Advocate Commissioner is a futile exercise.

6. Learned counsel for petitioner relied on a decision of this Court in ***Bandi Samuel and another v. Medida Nageswara Rao***¹ wherein it is held that delay in filing the application cannot be taken as a ground to dismiss the application. True that as observed in the cited decision, there is no time limit for appointment of an Advocate Commissioner and delay cannot be a sole ground to dismiss the petition. However, the trial court had dismissed the petition mainly on the ground that the nature of the suit filed by the plaintiff will not entitle plaintiff to seek for appointment of Advocate

¹ 2017 (1) ALD 582

Commissioner. So, even assuming that the delay cannot be a ground to dismiss the petition, the other strong reasons projected by the trial court for dismissal of the petition cannot be found fault. So, at the outset, I find no merits in the civil revision petition.

7. Accordingly, this civil revision petition is dismissed. No costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

21.12.2018
SS

U.DURGA PRASAD RAO, J

