

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

CIVIL REVISION PETITION No.2062 of 2018

06.04.2018

Between:

Thanapati Satyavati

..Petitioner

and

Indala Venkataramana and another

..Respondents

Counsel for the petitioner: Mr.K.Subrahmanyam

Counsel for the respondents: --

The Court made the following:



ORDER:

This Civil Revision Petition arises out of order, dated 07.02.2018, in I.A.No.728 of 2017 in A.S.No.44 of 2012 on the file of the learned Senior Civil Judge, Chodavaram.

2. The petitioner filed O.S.No.41 of 2008 before the Court of the Principal Junior Civil Judge, Chodavaram, for permanent injunction restraining the respondents from putting a slab on the petitioner's western wall and also to restrain them from spoiling the northern vacant space of the petitioner by pouring dust and discharging sullage water. After a full fledged trial, the trial Court dismissed the suit. The petitioner filed A.S.No.44 of 2012 on the file of the learned Senior Civil Judge, Chodavaram, feeling aggrieved by the dismissal of the suit. The petitioner also filed I.A.No.728 of 2017 in A.S.No.44 of 2012 for appointment of an Advocate Commissioner. In her affidavit filed in support of the said application, the petitioner, *inter alia*, stated as under.

“4. I further submit that while the matter stood thus, the defendants again trying to construct slab by extending it on my Western wall on 22.2.2008 for which I and my husband objected and somehow or other, and we could saved my Western wall. The defendants threatened that they will construct slab on my Western Wall on one day or other. I am an agriculturist and used to attend agricultural work. The defendants may construct slab during my absence and my family at the house. If the threats of the defendants are put into action, I will suffer

irreparable loss and hardship. Therefore, I filed this suit in O.S.No.41/2008 against the defendants for permanent injunction restraining the defendants from putting slab on my western wall and also further restrained not to spoil my Northern Vacant space by pouring dust and allowing usage water as otherwise I will suffer irreparable loss and hardship.

5. I further submit that after full trial the Lower Court dismissed the suit in O.S.No.41/2008. Aggrieved by the said decree and judgment in O.S.No.41/2008 I filed the above appeal and the same is coming for hearing. I have got good case in the above suit.

6. I further submit that to arrive at a just decision in the above appeal, it is highly essential to appoint one of the advocates as commissioner to note the physical features and also to measure the plaintiff's schedule property with the reference of sale deed dated 18.06.1951 and sale deed dated 28.03.1977 and also as per the boundaries mentioned in the sale deed dated 28.03.1977 of the plaintiff and to note the measurements of the house site of the defendants also, with their sale deeds and file his report. I am ready to pay the commissioner's fees etc., Unless the commissioner is appointed and file his report, I will suffer irreparable loss and injury."

3. From the reasons given out by the petitioner in the above reproduced paragraphs, it is evident that no specific purpose has been pleaded for appointment of the Advocate Commissioner. In order to succeed, the petitioner has to prove that the western side wall belongs to her and that the respondents are proposing to place a slab raised on the said wall. The petitioner has to adduce

independent evidence in order to substantiate her pleadings. Having regard to the nature of the pleadings of the petitioner, the Advocate Commissioner has no role to play at all.

4. Under Order XXVI Rule 9 C.P.C., an Advocate Commissioner is appointed for the purpose of elucidating any matter in dispute or for ascertaining the market-value of any property etc., As observed hereinbefore, the only matter in dispute is whether the western side wall belongs to the petitioner and whether the respondents are proposing to lay a slab on it. Therefore, there is no matter in dispute to be elucidated by appointment of an Advocate Commissioner and it necessarily follows therefrom that the application filed by the petitioner is wholly misconceived and the Court below has rightly dismissed the same, albeit for different reasons.

5. For the aforementioned reasons, the Civil Revision Petition is dismissed.

6. As a sequel to dismissal of the C.R.P., I.A.No.1 of 2018 filed by the petitioner for interim relief stands dismissed as infructuous.

06th April, 2018
GHN

C.V.NAGARJUNA REDDY, J