

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.2919 OF 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 03.04.2017 passed in I.A.No.43 of 2017 in O.S.No.1307 of 2010 on the file of the VII Senior Civil Judge, City Civil Court, Hyderabad.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the first respondent filed O.S.No.1307 of 2010 on the file of the VII Senior Civil Judge, City Civil Court, Hyderabad, against the petitioner and respondent Nos.2 to 5 to declare him as the owner of the suit schedule property and consequential perpetual injunction. During pendency of the suit, the petitioner filed I.A.No.452 of 2015, under Order XXVI Rule 9 C.P.C., for appointment of an advocate commissioner. The trial Court, after affording a reasonable opportunity to both parties, dismissed the said petition. Feeling aggrieved by the order dated 26.08.2016 passed in I.A.No.452 of 2015, the petitioner preferred Civil Revision Petition No.5344 of 2016 and the same was disposed of by this Court giving certain directions. The petitioner again filed I.A.No.43 of 2017, under Order XXVI Rule 9 C.P.C., for appointment of an advocate commissioner. The trial Court, after considering the material available on record, dismissed the said petition on 03.04.2017. Hence, the present revision.

4. In order to appreciate the rival contentions, it is not out of place to extract hereunder the operative portion of the order passed by this Court in C.R.P.No.5344 of 2016, which reads as follows:

“Accordingly and in the result, the revision is disposed of while setting aside the impugned order of the lower Court, however without reopening, but by giving liberty to the revision petitioner/defendant No.1 to file fresh application for the purpose indicated above and after hearing to appoint advocate commissioner for noting physical features and for demarcation of the suit site with reference to the revenue records and title deeds if any with survey assistance and at the expenses of the 1st defendant, including to answer any work memo of both parties within the scope to execute warrant and for early report.”

5. A perusal of the above order clearly reveals that the petitioner was permitted to file a fresh application. The petitioner filed the present interlocutory application with the following prayer:

“It is therefore prayed that this Hon’ble Court may be pleased to pass appropriate orders to appoint an Advocate Commissioner for recording ground realities of the suit property and to record the statements of the local residents in regard to suit schedule property and the 20’ vide road which is very adjacent to the suit property, and to pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case and in the interest of justice.”

6. This Court directed the petitioner to file an application for appointment of an advocate commissioner and to take the assistance of surveyor. For one reason or other, the petitioner did not seek the relief of appointing surveyor to identify the boundaries. The trial Court dismissed the petition on the ground that the petitioner has not filed the present interlocutory application in accordance with the directions given by this Court in C.R.P.No.5344 of 2016. A perusal of the record clearly reveals that the petitioner has not filed the present interlocutory application as directed by this Court. In such circumstances, the trial Court has

no other option except to dismiss the petition. The trial Court has considered the order passed by this Court in C.R.P.No.5344 of 2016 and also the relief sought in I.A.No.452 of 2015. The petitioner cannot blame anybody except himself for not complying with the order of this Court in C.R.P.No.5344 of 2016. I am fully agreeing with the finding recorded by the trial Court. There is no illegality, irregularity or impropriety in the order of the trial Court warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

7. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

8. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date: 05.07.2018
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T.SUNIL CHOWDARY, J

