

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.1511 OF 2016

ORDER:

This Civil Revision Petition is filed under Section 115 of C.P.C. assailing the order dated 04.01.2016 passed in I.A.No.860 of 2015 in A.S.No.17 of 2015 on the file of the Court of VI Additional District and Sessions Judge, Markapur.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the first respondent filed O.S.No.68 of 2000 on the file of the Court of the Junior Civil Judge, Giddalur, against the petitioner and second respondent for declaration and consequential mandatory injunction in respect of the suit schedule property. After full-fledged trial, the trial Court decreed the suit in favour of the first respondent and against the petitioner and second respondent. Feeling aggrieved by the judgment and decree of the trial Court, the petitioner and second respondent preferred A.S.No.17 of 2015 on the file of the Court of VI Additional District and Sessions Judge, Markapur. During pendency of the appeal, the petitioner and second respondent filed I.A.No.860 of 2015, under Order XXVI Rule 9 C.P.C., seeking appointment of an advocate commissioner. The first appellate Court, after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

4. It is an admitted fact that the trial Court decreed the suit in favour of the first respondent and against the petitioner and second respondent. A perusal of the record reveals that during

pendency of the suit, the first respondent filed I.A.No.251 of 2000 in O.S.No.68 of 2000 for appointment of the advocate commissioner to note down the physical features of the suit schedule property. The trial Court allowed the petition. For one reason or other, the petitioner and second respondent did not challenge the order passed in I.A.No.251 of 2000. Basing on the advocate commissioner's report, the first respondent filed a petition for amendment of the plaint seeking the relief of mandatory injunction and the same was allowed. An advocate commissioner can be appointed to note down the physical features of the suit schedule property. It is a settled principle of law that an advocate commissioner cannot be appointed for collection of the evidence. In order to appreciate the contention of the petitioner, it is not out of place to extract hereunder paragraph No.3 of the affidavit filed before the appellate Court:

3) So, I state that it is highly essential in the ends of justice to appoint Advocate-Commissioner to measure the suit schedule site with the help of qualified surveyor with reference to Exhibit:A2 & A3 and Exhibit:B1 & B2 in S.No.208 of Kandulapuram village and identified various extents occupied by various persons from the extremities and prepared a sketch with all details.

5. A perusal of the above paragraph clearly reveals that the petitioner filed the petition seeking appointment of advocate commissioner to identify the extent of land occupied by different persons, who, admittedly, are not parties to the suit. Identification of the suit schedule property itself amounts to collection of the evidence. As observed earlier, an advocate commissioner cannot be appointed for collection of the evidence. The first appellate Court considered the scope of Order XXVI Rule 9 C.P.C. in right perspective and dismissed the petition. The first appellate Court

has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the order under challenge. There are no grounds much less valid grounds to interfere with the order passed the first appellate Court. The revision petition lacks merits and is liable to be dismissed.

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

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

Date: 04.09.2018
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T.SUNIL CHOWDARY, J

