

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P. No.1995 OF 2017

ORDER:

This petition is filed under Article 227 of the Constitution of India questioning the order dated 20.03.2017 passed in I.A.No.279 of 2017 in O.S.No.457 of 2015 by the Principal Senior Civil Judge, Kakinada, dismissing the petition filed under Order XXVI Rule 9 C.P.C. to appoint an advocate commissioner to localize and identify the plaint schedule property with the help of sale deeds and to not down the physical features of the schedule property as boundary dispute with regard to the identity of the property, in view of the plea raised in the written statement and filing suit O.S.No.422 of 2011 and delivery of property by Court amen instead of delivering the property, which is subject matter of the other suit.

The petitioner admittedly, filed I.A.No.1343 of 2016 for appointment of advocate commissioner, which was dismissed on 30.11.2016 and that the petitioner preferred C.R.P.No.336 of 2017 also, it was disposed of on 08.02.2017 at the stage of admission giving liberty to file fresh application before the Court below. In pursuance of the leave granted by this Court, the petitioner renewed his request for appointment of advocate commissioner.

Upon hearing argument of both counsel, the Court below dismissed the petition recording the reason that there are no changed circumstances of this application i.e. from the date of filing of the earlier I.A.No.1343 of 2016 and to the date of filing this I.A., therefore, this application is barred by the principles of '*res judicata*' and that the plea of the petitioner that there was direction to him to file fresh petition is incorrect.

The reason assigned by the Court below is not justifiable to dismiss the petition since this Court in C.R.P.No.336 of 2017 permitted the

petitioner to file appropriate application for the same relief. Therefore, the impugned order is liable to be set aside.

In the result, the civil revision petition is allowed setting aside the order dated 20.03.2017 passed in I.A.No.279 of 2017 in O.S.No.457 of 2015 by the Principal Senior Civil Judge, Kakinada and remanded to the Court below to pass appropriate reasoned order in accordance with law within a month from the date of receipt of copy of this order.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

31.10.2018

Note: issue c.c. by 05.11.2018

b/o

kvrn

M.SATYANARAYANA MURTHY,J

