

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.3607 of 2018

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India assailing the order dated 04.04.2018 in I.A.No.138 of 2018 in O.S.No.152 of 2006 on the file of the Court of X Additional Chief Judge, City Civil Court, Hyderabad.

2. Heard Smt.Manjari S. Ganu, learned counsel for the petitioner and Sri A.Sudershan Reddy, learned senior counsel representing Sri G.Madusudhan Reddy, learned counsel for the respondents.

3. A perusal of the record reveals that the petitioner filed O.S.No.152 of 2006 on the file of the Court of X Additional Chief Judge, City Civil Court, at Hyderabad, against the respondents to declare that she is the owner of the suit schedule property and for recovery of the same. During the pendency of the suit, the petitioner filed I.A.No.56 of 2011 under Order XXVI Rule 9 of CPC for appointment of commissioner. The trial court allowed the petition and appointed the Deputy Director, Survey & Land Records, Central Survey Office, Hyderabad as Commissioner to inspect and identify the suit schedule property. The Deputy Director of Survey and Land Reforms inspected the suit schedule property and submitted his report. The Deputy Director, who

was appointed as commissioner, was examined as C.W.1 and his report was marked as Ex.C.1. After closure of the evidence on both sides, the petitioner filed I.A.No.729 of 2015 with a prayer to set aside the earlier commissioner's report and entrust the warrant to another Deputy Director for inspection of the suit schedule property and submit report. The trial Court dismissed the said I.A.No.729 of 2015 on 06.09.2017 on merits. Feeling aggrieved by the orders in I.A.No.729 of 2015, the petitioner preferred C.R.P.No.5060 of 2017. This Court dismissed the said revision petition on 20.12.2017 by making the following observation:

“Therefrom also there is nothing to interfere with the impugned dismissal order for appointment of second Commissioner concerned but for giving liberty to the petitioner if at all the first Commissioner's report including from his cross-examination as C.W.1 is incomplete to ask the trial Court for any re-entrustment of the like to decide on own merits.”

4. In pursuance of the orders passed by this Court, the petitioner again filed I.A.No.138 of 2018 seeking the same relief as sought for in I.A.No.729 of 2015.

5. At the time of arguments, both counsel in one voice submitted that I.A.No.729 of 2015 was filed after examination of C.W.1 and marking of Ex.C.1.

6. The trial Court also made an observation that the averments made in I.A.No.729 of 2015 and I.A.No.138 of 2018

are one and the same. The trial Court also observed that there is no pleading in the affidavit that the cross-examination of C.W.1 is incomplete. I have carefully perused the affidavit filed in support of the petition. In the entire affidavit, there is no mention that Ex.C.1 report is an incomplete one.

7. It is the case of the petitioner that she purchased an extent of 400 square yards in Sy.No.102/3 corresponding to old Sy.No.102/2 and 102/4/1 of Hakimpet village, Golkonda Mandal.

8. Learned counsel for the respondents submitted that the total extent of the land in the above survey numbers is around Ac.25.00 cents. The petitioner purchased an extent of 400 sq. yards out of Ac.25.00 cents. The learned counsel for the petitioner submitted that the suit schedule property is situated in Yamuna Nagar Cooperative Society. It is the case of the respondents that they purchased the property, which is situated in Venkateswara Cooperative Housing Society. It is not the case of the petitioner that the suit schedule property is situated in Sri Venkateswara Cooperative Housing Society. Both parties are claiming the property situated in two different Societies.

9. The interesting aspect to be considered in this revision is that for one reason or other, the petitioner did not choose

to file the lay-out plan of Yamuna Nagar Cooperative Society. In the absence of lay-out plan, it is very difficult to identify the plot of the petitioner out of total extent of Ac.25.00 cents. Even if the warrant was re-entrusted to the present Deputy Director, he may not be in a position to identify the suit schedule property without looking into the lay-out plan. It is needless to say, one will identify the plot taking the aid of lay-out plan issued by the competent authority. Though the suit was filed in the year 2006, the petitioner did not take any steps for all these years to secure the approved lay-out plan of Yamuna Nagar Cooperative Housing Society. Undoubtedly, if the approved lay-out plan is produced, it may throw some light on the controversy involved in the suit. It is needless to say that an advocate commissioner cannot be appointed for collection of evidence more particularly at the stage of arguments. It is not in dispute that the evidence on both sides was closed in the year 2015. For the last 2½ years, the matter is pending for arguments. Viewed from this angle also, no purpose will be served by appointing another commissioner.

10. The trial Court considered the material available on record in right perspective and dismissed the petition. I am fully endorsing the findings recorded by the trial court. There is no illegality, irregularity or impropriety in the impugned order warranting interference of this Court, while exercising

the revisionary jurisdiction under Article 227 of the Constitution of India. Hence, the civil revision petition lacks merits and bonafides and the same is liable to be dismissed.

11. In the result, the civil revision petition is dismissed. The observations if any made by this Court will confine to this order only. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

4th July 2018
Rns

