

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.4393 of 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the orders dated 03.07.2017 passed in I.A.No.276 of 2017 in O.S.No.180 of 2012 on the file of Principal Junior Civil Judge Court, Ramachandrapuram.

2. Heard the learned counsel appearing for both the parties.

3. The parties will hereinafter be referred to as they were arrayed before the trial Court to avoid confusion.

4. The petitioner filed O.S.No.180 of 2012 for declaration and other consequential reliefs against the respondents on the file of Principal Junior Civil Judge Court, Ramachandrapuram. During pendency of the suit, the petitioner filed I.A.No.402 of 2013 for appointment of advocate commissioner to measure the suit schedule property and identify the encroachment made by the respondents. The trial Court allowed the petition in the year 2013 itself. For one reason or other, the advocate commissioner did not submit the report. The petitioner again filed I.A.No.276 of 2017 seeking for appointment of advocate commissioner to measure the suit schedule property with the help of Mandal Surveyor, Ramachandrapuram.

5. The respondents filed counter opposing the appointment of advocate commissioner. The trial Court after affording a reasonable opportunity to both parties, arrived at a conclusion that it is not a fit case to appoint an advocate commissioner and consequently dismissed the petition. Hence, the revision.

6. Now, the point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order?

7. Admittedly, the trial Court allowed I.A.No.402 of 2013 appointing an advocate commissioner to measure the suit schedule property with the help of Mandal Surveyor. As per the averments made in the petition, the advocate commissioner did not file the report. As per the version of the petitioner, it is the fault of the advocate commissioner for not filing the report before the Court.

8. In order to appreciate the contention of the petitioner, it is not out of place to extract the relevant portion of the order:

“But in view of the clear admission made by P.W.1 in her cross examination that after appointment of the advocate commissioner by this court for measuring the land, the advocate commissioner brought the Mandal Surveyor for six times to her house to survey during the period of 4½ years which candidly reveals that the learned advocate commissioner made all his efforts to comply the warrant. It is the petitioner who had not cooperated with the advocate commissioner.”

9. A perusal of the above order clearly reveals that P.W.1 herself admitted in the cross-examination that the advocate commissioner along with the Mandal Surveyor visited her house for six times in 4½ years. This itself indicates that the petitioner did not cooperate with the advocate commissioner for execution of the warrant. On the other hand, the petitioner made allegations against the advocate commissioner as if he did not submit his report. It is not possible for the advocate commissioner to file the report without inspecting the suit schedule property. A perusal of the record reveals that due to non-cooperation of the petitioner, the advocate commissioner could not submit the report. The petitioner has not availed the opportunity granted by the trial Court. It appears after returning of warrant by the advocate commissioner, again the petitioner filed the present petition. Even if the advocate commissioner is appointed, there is no guarantee that the petitioner will cooperate with the advocate commissioner for execution of warrant. In such circumstances, appointment of an advocate commissioner is a futile exercise. The trial Court has assigned reasons much less cogent and valid reasons while dismissing the petition. I am fully endorsing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the orders of the trial Court warranting interference of this Court while exercising the jurisdiction

under Article 227 of the Constitution of India. Hence, the petition is liable to be dismissed.

10. In the result, the Civil Revision Petition is dismissed. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Dt:23.11.2018

Rns



