

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

Civil Revision Petition No.4770 of 2018

Order:

This revision is filed, under Article 227 of the Constitution of India, against the order passed by the Chief Judge, City Civil Court, Hyderabad in I.A. No. 1792 of 2018 in O.S. No. 226 of 2013 dated 26.6.2018.

I.A. No. 1792 of 2018 was filed by the respondents herein, under Order 26 Rule 9 read with Section 151 CPC, requesting the Court to appoint an Advocate Commissioner to measure the extent of premises bearing No. 8-2-684/4/21 in Survey No. 129/36 situated at Road No.12, Banjara Hills, Hyderabad.

In the order under revision, the learned Chief Judge noted the submission of the 1st respondent herein that they had filed a Suit, for recovery of money, against the petitioner as he had represented that he was the owner and was in possession of an extent of 570 square yards, equivalent to 475 square meters, by virtue of a registered gift deed dated 31.1.2003; he had filed an application before the ULC for regularization of the suit schedule property; it was regularized vide endorsement dated 4.9.2006 and was communicated to him vide GO Ms No. 1038 dated 2.8.2006; and he had offered to sell the property, and the 1st respondent had agreed to purchase the same for Rs.2,28,00,000/- at Rs.40,000/- per square yard.

The Learned Chief Judge also noted that the first respondent had submitted that he had paid the consideration and had got the property registered in his favour; on measurement, he found that

the said property was only of an extent of 524.88 square yards, and not 570 square yards as represented, sold and conveyed in the sale deed; there was a difference of 45.12 square yards; he had brought the said fact to the notice of the petitioner herein, and had requested him to measure the same; but the petitioner had avoided doing so; and, therefore, he had filed the suit for refund of the cost of the said differential area of 45.12 square yards at Rs.40,000/- per square yard amounting to Rs.18,04,800/- with interest at 24% per annum.

After taking note of the contents of the counter-affidavit, the Court below found it just and reasonable to appoint an Advocate Commissioner for measuring the property to ascertain whether there was a differential area of 45.12 square yards. The Advocate Commissioner was appointed to measure the premises, and to file a report with the photographs of the property.

Sri V.S.R. Anjaneyulu, learned counsel for the petitioner, would submit that the order under revision came to be passed on the erroneous premise that the subject plot was sold at Rs.40,000/- per square yard; the consideration of Rs.2,28,00,000/- was for the entire extent of 570 square yards; and, in a suit for recovery of money, the Court below had erred in appointing the Advocate Commissioner.

The fact that the extent of land sold, by the petitioner to the first respondent, is 570 square yards has not been disputed before this Court. The respondent-plaintiff had filed the suit for recovery of an amount of Rs. 18,04,800/- on the ground that the extent of land reflected in the sale deed was 570 square yards, but on measurement, it was found to be only of an extent of 524.88 square

yards; and, for this differential area of 45.12 square yards, they were entitled to recover a sum of Rs.18,04,800/-. As the entire basis, for the suit filed for recovery of money, is that, while the extent of land sold to the respondents is 570 square yards, the actual extent on ground is only 524.88 square yards. The Court below has considered it appropriate therefore to have the extent of land, sold by the petitioner to the respondents, measured in order to determine the actual extent of the subject land.

The jurisdiction which this Court exercises, under Article 227 of the Constitution of India, is supervisory and is not appellate, and save patent illegality in the order under revision or substantial injustice being caused to the petitioner, no interference is called for.

I am satisfied that the order under revision does not suffer from any such infirmity. No prejudice, much less substantial injustice, would be caused to the petitioner merely by the Advocate Commissioner measuring the land and submitting a report to the Court below.

The Civil Revision Petition fails and is, accordingly, dismissed.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

RAMESH RANGANATHAN, J

Date: 31st August, 2018

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