

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.6179 of 2016

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 05.07.2016 passed in I.A.No.378 of 2016 in O.S.No.140 of 2009 on the file of the Court of Principal Junior Civil Judge, Anantapuram.

2. Heard the learned counsel appearing for both the parties and perused the material on record.

3. The facts leading to filing of the present revision are as follows:

The petitioner filed the petition to permit her to examine the advocate commissioner. The respondents filed counter *inter alia* contending that the petitioner is not entitled to examine the advocate commissioner without filing the objections. The trial Court after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

4. The point that arises for consideration is:

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

P O I N T:

5. A perusal of the record reveals that the petitioner filed O.S.No.140 of 2009 on the file of the Court of Principal Junior Civil Judge, Anantapuram, against the respondents for

declaration of easementary right and consequential perpetual injunction in respect of the suit schedule property. During pendency of the suit, the petitioner filed the petition under Order 26 Rule 9 CPC for appointment of an advocate commissioner to note down the physical features of the suit schedule property. The trial Court allowed the petition and the advocate commissioner visited the suit schedule property and submitted his report. The petitioner filed I.A.No.378 of 2016 under Order 16 Rule 14 CPC seeking permission of the Court to permit her to examine the advocate commissioner, who visited the suit schedule property. The trial Court dismissed the petition. The very purpose of appointment of an advocate commissioner is to note down the physical features of the suit schedule property.

6. A perusal of the record reveals both parties have not filed objections to the advocate commissioner's report. Examination of advocate commissioner as one of the witness may be helpful to the Court to resolve the issue involved in the suit. If the petition is dismissed, it may not be possible for the petitioner to substantiate her stand. Even if the petition is allowed, the same may not cause any prejudice to the respondents. The trial Court without taking into consideration the prejudice likely to be caused to the petitioner, if the advocate commissioner is not examined, dismissed the petition on erroneous grounds. Taking into consideration over all facts and circumstances of the case on hand, this Court is of a considered view that it is a fit case to allow the petition.

7. In the result, the Civil Revision Petition is allowed setting aside the orders dated 05.07.2016 passed in I.A.No.378 of 2016. Consequently, I.A.No.378 of 2016 in O.S.No.140 of 2009 on the file of the Court of Principal Junior Civil Judge, Anantapuram, is allowed. No order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Dt:08.10.2018

Rns

