

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION NO.4965 OF 2018

ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the IV Senior Civil Judge, City Civil Court, Hyderabad in I.A. No.311 of 2018 in O.S. No.504 of 2016 dated 30.07.2018.

The petitioners herein are the defendants in O.S. No.504 of 2018. They filed I.A. No.3121 of 2018, under Order XXVI Rule 9 CPC, seeking appointment of an Advocate Commissioner. The reason for seeking appointment of an Advocate Commissioner, as is evident from the affidavit filed in support of the I.A, is to take inspection of the suit schedule property and identify whether there is any incursion by the petitioners into the respondents property.

In the order under revision, the Court below held that the only ground, for seeking appointment of a Commissioner, is whether there was any interference by the petitioners; the application was general in nature and did not refer to the exact disputes for which the Commissioner was sought to be appointed; the dispute was with regards the boundaries, physical features, identity of the property etc; the application to appoint an Advocate Commissioner, to bring on record any interference by the petitioner, was merely an attempt to collect evidence for which a Commissioner cannot be appointed; and, since no valid grounds were raised for appointment of an Advocate Commissioner, the applicant was not entitled for relief.

As has been noted by the Court below, the suit in O.S. No.504 of 2016 was filed seeking declaration of title over the suit schedule property, and for grant of perpetual injunction. The application filed for appointment of an Advocate Commissioner is, supposedly, to

ascertain whether or not the petitioners were intruding into the properties of the respondent. Such a prayer for appointment of an Advocate Commissioner is extraneous to the Suit proceedings itself. The Court below was justified in holding that, based on such a vague affidavit, no Advocate Commissioner could be appointed.

The supervisory jurisdiction under Article 227 of the Constitution of India is to be exercised sparingly, and only in appropriate cases, where the judicial conscience of the High Court dictates it to act lest gross failure of justice or grave injustice occasion. Care, caution and circumspection needs to be exercised when this jurisdiction is sought to be invoked during the pendency of any Suit or proceedings in a subordinate court and the error, though calling for correction, is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition, invoking the supervisory jurisdiction, would obstruct the smooth flow and/or early disposal of the Suit or proceedings. The High Court may feel inclined to intervene where refusal to do so would result in travesty of justice. **(D.N. Banerji v. P.R. Mukherjee¹).**

I am satisfied that, in the present case, refusal to interfere would not result in travesty of justice. As the impugned order does not suffer from a patent error, the Revision fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. No costs.

(RAMESH RANGANATHAN, J)

Date: 05.10.2018

MRKR

¹ AIR 1953 SC 58

