

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.4344 of 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India assailing the order dated 07.06.2017 passed in I.A.No.179 of 2017 in O.S.No.406 of 2002 on the file of the Court of I Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar.

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

3. A perusal of the record reveals that respondents 1 to 6 have filed O.S.No.406 of 2002 on the file of the Court of I Additional Senior Civil Judge, Ranga Reddy District, at L.B.Nagar, for eviction of the petitioner – society from the suit schedule property. During pendency of trial, the petitioner filed the petition under Order 26 Rule 9 CPC for appointment of an advocate commissioner. The trial Court after affording opportunity to both parties, dismissed the petition. Hence, the revision.

4. In order to appreciate the rival contentions, it is appropriate to refer to the decision in **MOHAMMED JAFFER ABDUL QADEER QURESHI v. AZIZ-UR-REHMAN QURESHI AND OTHERS**¹ wherein it was held at para 12 as follows:

“There is no hard and fast rule or a settled proposition of law that an Advocate Commissioner cannot at all be appointed for any purpose in a suit for perpetual injunction

¹ 2016(3) ALD 38

and it cannot be laid down as a rule of thumb that in no suit for perpetual injunction, an Advocate Commissioner can be appointed; however, the law is well settled that a Commissioner cannot be appointed to find out as to who amongst the parties is in possession of the property as it is the function of the Court to decide the issue as to who amongst the parties is in possession of the property and the said judicial function cannot be delegated to an Advocate Commissioner. Under law, in any suit in which the Court deems local investigation is requisite or proper for the purpose of elucidating any matter in dispute, the Court may issue a commission to an advocate or any competent person and direct to make such investigation and to report to the Court.”

5. Let me consider the facts of the case on hand in the light of the above legal principle.

6. The respondents filed the suit for eviction of the petitioner from the suit schedule property. Both the counsel submitted that now the suit is coming up for defendant's side arguments. In a suit for eviction, the Court has to consider whether there is jural relationship of landlord and tenant and whether the tenant committed default in payment of rent or any other terms and conditions stipulated in the agreement. It is not in dispute the respondents and petitioner entered into a lease agreement on 01.05.1993. The lease agreement was marked as Ex.A1.

7. The relief sought in the petition reads as follows:

“to appoint Advocate Commissioner to note down the physical features of suit schedule property and its occupants and pass such other or further relief in the interest of justice.”

8. A perusal of the above relief clearly reveals that the petitioner filed the petition for appointment of advocate commissioner in order to ascertain the persons, who are in possession of the suit schedule property. It is needless to say that the advocate commissioner cannot be appointed for collection of evidence. It is not the case of the petitioner that the respondents herein sold the property covered under Ex.A1 to the third parties. The trial Court also made an observation that if the petition is allowed, certainly it would amount to collection of evidence. The facts of the case on hand are identical to the facts of the case cited supra.

9. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that it is not a fit case to allow the revision. There is no illegality or irregularity in the order passed by the trial Court warranting interference of this Court. There are no merits and bonafides in the revision petition and the same is liable to be dismissed.

10. In the result, the Civil Revision Petition is dismissed. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

18th July 2018
Rns

T.SUNIL CHOWDARY, J

