

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.5115 of 2018

ORDER:

The revision petitioner is the plaintiff in OS.No.212 of 2018 on the file of learned I Additional Junior Civil Judge, Nellore, which is a suit for permanent prohibitory injunction maintained against the defendant with a claim that he is the tenant under the defendant for the plaint schedule property house with site in question. Pending suit, he filed a petition from temporary injunction and no exparte ad interim injunction or interim injunction so far granted undisputedly. It is his version in IA.No.100 of 2018 seeking appointment of an advocate commissioner under Order XXVI Rule 9 CPC that with the permission of the landlord under the so called tenancy, the petitioner/plaintiff in the suit raised 2 rooms additionally and those 2 rooms are using for go-down purposes and those are demolished and the material in the go-down was taken away allegedly by the defendant-owner of the premises. It is to note down the physical features sought for appointment of advocate commissioner. It is on contest ended in dismissal by the impugned order dated 04.07.2018.

Same is the impugment in the revision with the contentions in the grounds of revision vis-à-vis oral submissions of learned counsel for the plaintiff, revision petitioner supra that the impugned order of the lower Court dismissing the application for appointment of an advocate

commissioner is baseless, unsustainable and contrary to law and it is not even fishing of information but simply asked to note down the physical features about the alleged demolition and thereby the order is liable to be set aside and revision to be allowed.

Whereas it is the submission of the learned counsel for the defendant/respondent that the order of the lower Court is sustainable and it no way requires interference for this Court while sitting in revision within the limited scope.

Heard both sides and perused the material on record.

No doubt as held by in **Bandi Samuel Vs. Medida Nageswara Rao**¹ and **Sharada Bai Vs. Satyanarayana Peeti (Since Died) per LRs**², the noting of physical features is no way fishing of information and even in a suit for injunction, a commissioner can be appointed and what is the wording of Order XXVI Rule 9 r/w Sections 75 & 76 CPC contemplates for local inspection is for the purpose of elucidating the matter in controversy that is the crux for consideration as to appointment of commissioner can be made or not depending upon the facts of each case and there is no such particularly set out as to at what stage of suit a commissioner can be appointed but for depending upon the facts of each case to consider the necessity. Leave about the above for no more discussion need be undertaken on that even in a temporary injunction application, the Court if feels just a commissioner can be appointed.

¹ 2017 (1) ALT 493

² 2017 (2) ALT 211

Here it is not the measurement of the property, but for no doubt to note down the physical features of demolition of the alleged 2 rooms of the so called unauthorized construction without municipal plan even according to say in saying so called oral permission of the landlord.

Undisputedly from the plaint page No.2 Para 5 it refers about the police report given and crime No.151 of 2018 registered by the V Town Police Station, Nellore, in this regard of the alleged demolition. Once crime registered and pending investigation, the scene observation report must form part of the investigation material that can be produced before the Court if at all any evidence adduced. Thereby there is no necessity of ascertaining as on date for appointment of commissioner as to there was any demolition and what are the physical features as the scene observation itself indicates what are the physical features therein.

Having regard to the above, this Civil Revision Petition is disposed of rather than dismissal. Needless to say in the course of hearing the temporary injunction application if the Court feels it just pursuant to the expressions supra can appoint advocate commissioner. No costs.

Miscellaneous petitions, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 25.09.2018
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