

SMT. JUSTICE T. RAJANI

CIVIL REVISION PETITION No.5125 OF 2018

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is preferred by the petitioner - defendant against the order, dated 08.08.2018, passed in I.A. No.285 of 2018 in O.S. No.689 of 2012 by the Principal Senior Civil Judge at Srikakulam.

2. Heard the learned counsel for the petitioner - defendant and the learned counsel for the respondents - plaintiffs.

3. The impugned order is passed in a petition, which is filed under Order XXVI, Rule 9 of the Code of Civil Procedure, 1908, seeking for appointment of Advocate-commissioner. The grounds, on which the petition is filed, are that the boundaries mentioned in the suit schedule are not correct.

4. The learned counsel for the petitioner submits that the petitioner has another property adjoining the suit schedule property, which is her self-acquired property.

5. The trial Court dismissed the petition, considering that it is filed at the fag end of the matter and that the property mentioned in the petition is not, in any way, related to the suit schedule property. This Court does not find any fault with the order under challenge. Apart from the petition being belated, this Court opines that since the property is contended to be a self-acquired, the petitioner can as well prove that

the said property is not joint family property, by way of documentary evidence. Merely because the boundaries mentioned in the suit schedule are not correct, Commissioner would not be necessitated to verify the boundaries. When the properties are covered by documentary evidence, parties can prove the identity of the property with the help of those documents. Moreover, the conduct of the petitioner in not filing the petition till the fag end, though the plaint containing the schedule is filed, would also reveal the frivolity of the petitioner. She could have filed the petition immediately after noticing that the boundaries mentioned in the schedule are incorrect. Viewed from any angle, necessity to appoint a commissioner does not exist.

6. In view of the above, the present Civil Revision Petition is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the revision stand closed.

SMT. T. RAJANI, J

November 16, 2018

Mgr