

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.5689 of 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 24.07.2018 passed in I.A.No.190 of 2018 in O.S.No.100 of 2011 on the file of the Court of Senior Civil Judge, at Gadwal.

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

3. Respondents 1 to 14 herein, who are the defendants in the suit, filed I.A.No.190 of 2018 against the petitioners herein and seven others under Order VI Rule 9 read with Section 151 CPC and Section 76 CPC for re-entrustment of warrant to the same advocate commissioner to note down the physical features of the suit schedule property. The petitioners filed counter *inter alia* contending that there are no grounds for re-entrustment of warrant to the same advocate commissioner. The trial Court after affording a reasonable opportunity to both parties, allowed 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 petitioners herein along with others have filed O.S.No.100 of 2011 on the file of the Principal Senior Civil Judge, at Gadwal, against respondents 1, 2, 4 and others for declaration and recovery of possession.

During pendency of the suit, the petitioners herein have filed I.A.No.277 of 2013 under Order 26 Rule 9 CPC for appointment of an advocate commissioner to inspect the suit schedule property with the help of surveyor and note down the physical features. After completion of the local inspection, the Advocate Commissioner submitted his report along with Surveyor's report. The respondents 1 and 2 along with others have filed I.A.No.190 of 2018 with a prayer to re-entrust the warrant to the same advocate commissioner to note down the physical features of the suit schedule property. It is not in dispute that the advocate commissioner was appointed to inspect the suit schedule property and note down the physical features. For one reason or the other, the advocate commissioner did not mention the physical features of the suit schedule property in his report. In order to appreciate the rival contentions, it is not out of place to extract hereunder the relevant portion at paragraph No.8 of the order:

“In the location map the Assistant Director mentioned that encroachers in Sy.No.116 and 118. The Advocate commissioner in his report not mentioned physical features of schedule property. In the warrant Item Nos.1 to 6 house, shops mentioned but the advocate-commissioner not mentioned about physical features of the same.”

6. A perusal of the above para clearly reveals that the advocate commissioner has not mentioned the physical features. The very purpose of appointing of an advocate commissioner is to note down the physical features of the suit schedule property. The trial Court after taking into

consideration the report of the advocate commissioner allowed the petition. If the petition is dismissed, it may not be possible for the Court to know the physical features of the suit schedule property. Even if the petition is allowed, the same may not cause any prejudice to the petitioners herein. I am fully endorsing with the findings recorded by the Court below. There is no illegality, irregularity or impropriety in the orders of the trial Court, which warrants interference of this Court. Hence, the revision petition lacks merits and bonafides and the same is liable to be dismissed. Accordingly, point is answered.

7. In the result, the Civil Revision Petition is dismissed at the stage of SR. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

Dt:01.10.2018
Rns

T.SUNIL CHOWDARY, J

