

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

C.R.P.No.6474 of 2018

ORDER:

This revision is filed aggrieved by order dated 27-08-2018 passed in E.A.No.129 of 2018 in OEP.No.57 of 2016 in O.S.No.85 of 2014 on the file of Junior Civil Judge's Court-cum-Judicial Magistrate of First Class, Pakala, Chittoor District, wherein and whereby the application filed by the petitioners under Order 26 Rule 9 C.P.C.to appoint an advocate commissioner to note down the physical features and location of the property and its measurements with the help of Mandal Surveyor is dismissed.

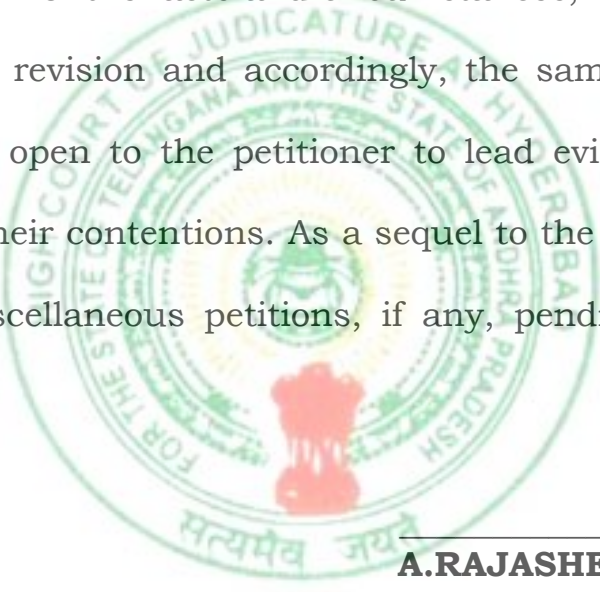
Learned counsel for the petitioners submits that the petitioners are in possession of the land in sy.No.185/9 but not in sy.No.191/6 of Rayavaripalle Village only to find out the said aspect this application is filed. But the Court below without considering the same dismissed the application. He submits that execution proceedings are continuation of suit proceedings, but the Court below erroneously dismissed the application holding that Order 26 Rule 9 CPC has no application to execution proceedings.

In this case, it is to be seen that though learned counsel for the petitioner submits the petitioners are in not in possession of land in sy.No.191/6 but in possession of land in sy.No.185/9, there is dispute regarding identity of property. For that purpose, the petitioners wanted appointment of commissioner for location of the property. But in the affidavit

filed in support of said application except stating the case on merits, the said aspect is not mentioned. Even according to the petitioners, the application filed under Section 5 of Limitation Act for setting aside the exparte judgment was dismissed on 27-07-2017. That suit is already decreed and the petitioners remained exparte. Now the petitioners can lead evidence in Execution Petition (EP) and the same can be considered while disposing of the EP. As such, the question of appointment of commissioner may not arise.

In view of the facts and circumstances, I do not see any merit in the revision and accordingly, the same is dismissed. It is always open to the petitioner to lead evidence in EP in support of their contentions. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

12-11-2018
Nvl



A.RAJASHEKER REDDY,J



