

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.5424 of 2017

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 02.03.2017 passed in I.A.No.141 of 2017 in O.S.No.3534 of 2010 on the file of the VI Junior Civil Judge, City Civil Court, Hyderabad.

2. Heard the learned counsel for both parties.

3. A perusal of the record reveals that the first respondent filed O.S.No.3534 of 2010 against the petitioner and second respondent for declaration to declare the permission granted in favour of the petitioner as illegal and consequential mandatory injunction for removal of the structures. During pendency of the suit, the first respondent filed I.A.No.141 of 2017 for appointment of an 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 in this revision petition is:

Whether there is any illegality, irregularity or impropriety in the order of the trial Court?

5. A perusal of the record reveals that the first respondent filed O.S.No.3534 of 2010 on the file of the VI Junior Civil Judge, City Civil Court, Hyderabad, against the petitioner and second respondent for declaration to declare the permission granted in favour of the petitioner, as illegal and void and consequential mandatory injunction for removal of the structures. While things

stood thus, the first respondent filed I.A.No.141 of 2017, under Order XXVI Rule 9 read with Section 151 C.P.C., for appointment of an advocate commissioner to note down the physical features of the suit schedule property. The petitioner filed a counter *inter alia* contending that the petition filed by the first respondent is not maintainable either on facts or in law. The trial Court allowed the petition.

6. It is a settled principle of law that an advocate commissioner cannot be appointed for collection of the evidence. It may not be possible for the Court to visualize the suit schedule property, sometimes, basing on the oral and documentary evidence produced before the Court. The first respondent filed the suit seeking the relief of mandatory injunction. The first respondent filed the present interlocutory application with a prayer to appoint the advocate commissioner to note down the physical features of the suit schedule property. Even if the advocate commissioner will submit the report, the same will not affect the rights vested in favour of the parties to the proceedings. In the instant case, the advocate commissioner's report may help the Court in order to arrive at a conclusion whether there are any structures in the suit schedule property. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the petitioner that the first respondent filed the petition for the purpose of collection of evidence. The trial Court, after taking into consideration the material available on record, rightly allowed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. There is no illegality, irregularity or impropriety in the order of the trial Court warranting interference of this Court while

exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the revision petition lacks merits and *bona fides*.

7. In the result, the Civil Revision Petition is dismissed. There shall be no order as to costs.

8. Consequently, Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 10.09.2018
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