

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION Nos.5931 and 5926 OF 2017

COMMON ORDER:

These Civil Revision Petitions are filed under Article 227 of the Constitution of India assailing the orders dated 21.10.2017 passed in I.A.Nos.464 and 465 of 2017 in O.S.No.111 of 2015 on the file of the Principal Junior Civil Judge at Mancherial.

2. The trial Court passed a common order in both the petitions. Hence, this Court is inclined to pass a common order in both the revision petitions in order to avoid confusion.

3. Heard the learned counsel for both parties.

4. A perusal of the record reveals that the petitioner filed O.S.No.111 of 2015 on the file of the Principal Junior Civil Judge at Mancherial, against the respondents for declaration that she is the absolute owner of an extent of 484 square yards in Survey No.77 of Mancherial and recovery of an extent of 18.55 square yards from respondent No.1 and 5.77 square yards from respondent No.4. The petitioner also sought the relief of perpetual injunction restraining respondent Nos.2, 3 and 5 not to interfere with the suit schedule property. After closure of evidence on both sides, the petitioner filed an interlocutory application for recasting of the issues and the same was allowed. After recasting the issues, both parties adduced evidence. From 2017 onwards the matter is coming up for arguments; at that stage, the petitioner filed I.A.No.464 of 2017, under Section 151 C.P.C., to reopen the matter and I.A.No.465 of 2017, under Order XXVI Rule 9 C.P.C. for

appointment of an advocate commissioner. The trial Court, after affording a reasonable opportunity to both parties, arrived at a conclusion that the petitions lack merits and bona fides and consequently, dismissed the petitions. Hence, these revision petitions.

5. Learned counsel for the petitioner strenuously submitted that the report of the advocate commissioner certainly will help the Court to resolve the issue involved in the suit.

6. Learned counsel for the respondents submitted that an advocate commissioner cannot be appointed for the purpose of collection of evidence.

7. Basing the rival contentions, the point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order?

8. It is needless to say that in a suit for declaration, the plaintiff may succeed or fail basing on the strength or weaknesses of his/her case. In a suit for declaration the plaintiff is not entitled for the relief of declaration basing on the laches or lacunae on the part of the defendants. In a suit for declaration, the plaintiff has to prove his/her case by preponderance of probabilities. In order to succeed, the petitioner has to establish that she is the absolute owner of an extent of 484 square yards in Survey No.77 of Mancherial. The burden of proof lies on the petitioner to establish

that respondent Nos.1 and 4 encroached schedule 'A' and 'B' property.

9. I have carefully perused the affidavit filed in support of the petition in I.A.No.465 of 2017. The prayer sought by the petitioner is to measure the plot of the petitioner and plot of respondent Nos.1 and 4. It is not in dispute that the property of respondent Nos.1 and 4 is not the subject matter of the suit. The respondents are not denying the identity of the suit schedule property. If there is any dispute with regard to the identity of suit schedule property, there may be some justification for appointment of an advocate commissioner. I.A.No.465 of 2017 is filed for appointment of an advocate commissioner to note down the physical features of the suit schedule property. As per the averment made in the plaint, respondent Nos.1 and 4 removed the fencing prior to filing of the suit. To prove the above aspects, advocate commissioner's report is no way helpful to the petitioner. It is needless to say that an advocate commissioner cannot be appointed for collection of evidence. The tenor of the affidavit filed by the petitioner clearly demonstrates that he filed the above I.A. for appointment of an advocate commissioner in order to collect some evidence, which is not permissible under law. The trial Court considered all these aspects in right perspective and dismissed the petitions. I am fully endorsing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the impugned order so as to set aside the same, while exercising the jurisdiction under Article 227 of the Constitution of India.

10. In the result, both the Civil Revision Petitions are dismissed. There shall be no order as to costs. Consequently, Miscellaneous Petitions, if any, pending in both the Civil Revision Petitions shall stand closed.

T.SUNIL CHOWDARY, J

Date: 04.07.2018
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