

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.5629 of 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the orders dated 04.07.2017 passed in I.A.No.1126 of 2011 in O.S.No.127 of 2011 on the file of Principal Junior Civil Judge Court, Bapatla.

2. Heard the learned counsel appearing for the petitioner and perused the material on record.

3. The point that arises for consideration is:

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

4. A perusal of the record reveals that the respondent filed O.S.No.127 of 2011 on the file of Principal Junior Civil Judge Court, Bapatla, against the petitioner seeking perpetual injunction in respect of an extent of Ac.0.05 cents. After completion of the respondent (plaintiff) side evidence, the petitioner filed I.A.No.1126 of 2011 under Order 26 Rule 9 CPC to appoint advocate commissioner to measure the property purchased by the petitioner from Bolagani Krishnaveni.

5. The respondent filed counter *inter alia* contending that the petition is not maintainable.

6. The trial Court after taking into consideration the material available on record arrived at a conclusion that it is not a fit

case to appoint an advocate commissioner to measure the land and consequently dismissed the petition. Hence, the revision.

7. It is a settled principle of law that in a suit for perpetual injunction the plaintiff has to establish that he has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit. In the present case, the respondent, who is plaintiff, has to establish that she has been in possession and enjoyment of the suit schedule property much less as on the date of filing of the suit.

8. This Court carefully perused the plaint schedule in order to appreciate the rival contentions. The trial Court made an observation that there is no dispute between the parties with regard to the identity of the property. A perusal of the testimony of P.W.2, the father of the respondent, clearly reveals that there is no dispute with regard to the identity of the property. In such circumstances, the appointment of an advocate commissioner does not arise. Even if the advocate commissioner is appointed, no purpose will be served. The trial Court considered the material available on record in right perspective and dismissed the petition. The trial Court has assigned reasons much less cogent and valid reasons to its findings. I am fully endorsing with the findings recorded by the Court below. There is no illegality, irregularity and impropriety in the orders passed by the trial Court warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the revision petition is liable to be dismissed.

9. In the result, the Civil Revision Petition is dismissed.
There is no order as to costs. As a sequel, miscellaneous
petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Dt:11.12.2018

Rns

