

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.5551 of 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the orders dated 19.07.2017 passed in I.A.No.259 of 2017 in O.S.No.77 of 2008 on the file of Senior Civil Judge Court, Hindupur, Ananthapur District.

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

3. The point that arises for consideration is:

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

4. A perusal of the record reveals that the petitioner filed O.S.No.77 of 2008 on the file of Senior Civil Judge Court, Hindupur, against the respondents for declaration and consequential perpetual injunction in respect of the suit schedule property. The second respondent filed O.S.No.203 of 1999 against the first respondent for specific performance of agreement of sale. The trial Court after full fledged trial, decreed O.S.No.203 of 1999. Feeling aggrieved by the judgment and decree in O.S.No.203 of 1999, the first respondent preferred A.S.No.3 of 2006 on the file of Senior Civil Judge Court, Hindupur. The learned Senior Civil Judge dismissed the appeal on merits. The first respondent, assailing the judgment and decree in A.S.No.3 of 2006, preferred S.A.No.304 of 2010 on the

file of this Court. While things stood thus, the second respondent filed E.P.No.69 of 2007 in O.S.No.203 of 1999 for delivery of the property. On 12.07.2008 the executing Court closed the E.P., with an endorsement that the property was delivered in favour of the second respondent.

5. It is the case of the petitioner that she has been in possession and enjoyment of the suit schedule property; therefore, she is entitled for declaration. It is the further case of the petitioner that taking advantage of the proceedings in E.P.No.69 of 2007, the respondents are trying to occupy the suit schedule property. The respondents have filed a written statement in the year 2008 by taking a specific plea that they have been in possession and enjoyment of the suit schedule property. Pending suit, the petitioner filed I.A.No.134 of 2011 for withdrawal of the suit and the same was dismissed on 06.01.2016. Feeling aggrieved by the orders in I.A.No.134 of 2011, the petitioner preferred revision and the same is pending. Thereafter, the petitioner filed I.A.No.339 of 2016 for appointment of an advocate commissioner to inspect the suit schedule property and file report. The advocate commissioner with the help of surveyor visited the suit schedule property and filed his report. The petitioner filed a petition under Order VI Rule 17 CPC seeking for amendment of plaint for the relief of recovery of possession. The respondent Nos.3 to 7 filed counter *inter alia* contending that the petition is filed to drag on the proceedings. As observed earlier, the respondents have taken a

specific plea in their written statement that they have been in possession and enjoyment of the suit schedule property. For a period of six years, the petitioner has not taken any steps either to file a rejoinder denying the plea taken by the respondents in their written statement or to file an application of this nature at the earliest point of time.

6. This Court carefully perused the commissioner's report at page No.32 of the material papers. If this Court expresses any opinion on the Commissioner's report, at this point of time, the same may cause prejudice to one of the parties to the proceedings.

7. A perusal of the record reveals that the petitioner has taken six years time to file her chief examination affidavit. As and when the trial Court insisted the petitioner to file chief-examination affidavit, she used to file interlocutory applications one after the other and accordingly dragged on the matter for a period of six years. Whether the property covered in E.P.No.69 of 2017 and the subject matter of the suit schedule property is one and the same or not will be decided at the time of full fledged trial only. The petitioner has given one version in the affidavit and another version in the FIR. In view of the pendency of the suit, this Court is not inclined to express any opinion with regard to controversial issues. The petitioner miserably failed to prove the basic ingredients of Order VI Rule 17 CPC. There is no material much less convincing evidence to allow the amendment petition. The Court shall not allow the amendment petitions in a

routine manner. The trial Court considered all these aspects 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 trial Court. There is no illegality, irregularity or impropriety in the orders of the trial Court warranting interference of this Court, while exercising the jurisdiction under Article 227 of the Constitution of India. Hence, the petition is liable to be dismissed.

8. 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.

Dt:17.12.2018
Rns

T.SUNIL CHOWDARY, J

