

THE HON'BLE JUSTICE SRI T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.6064 of 2017

ORDER:

1 Challenge in this Civil Revision Petition, filed under Article 227 of the Constitution of India, is to the order dated 17.08.2017 passed in I.A.No.195 of 2017 in O.S.No.18 of 2015 on the file of the Court of the Principal Junior Civil Judge, Sullurpet.

2 Heard the learned counsel for the petitioner.

3 The petitioner filed I.A.No.195 of 2017 under Order 26 Rule 9 CPC seeking for appointment of an advocate commissioner for inspection of the suit schedule property. The respondent filed counter *inter alia* contending that the second petition for appointment of advocate commissioner. The trial court, after affording reasonable opportunity to both parties, dismissed the petition. Hence the present Civil Revision Petition.

4 The point for consideration is whether there is any illegality, irregularity or impropriety in the impugned order warranting interference of this Court?

5 A perusal of the record reveals that the petitioner filed O.S.No.18 of 2015 on the file of the Court of the Principal Junior Civil Judge, Sullurpet against the respondent for declaration and recovery of the suit schedule property. During the pendency of the suit, the petitioner filed I.A.No.131 of 2015 under Order 26 Rule 9 CPC for appointment of an advocate commissioner to note down the physical features of the suit schedule property and the constructions, if any, existing on it. The learned advocate

commissioner, after service of notice to both parties, visited the suit schedule property and submitted his report. Thereafter, the petitioner once again filed I.A.No.195 of 2017 for appointment of advocate commissioner for identification of the suit schedule property and the constructions, if any, made therein.

6 It is a settled principle of law that in a suit for declaration, the plaintiff may succeed or fail basing on the strength or weakness of his or her case. It is equally settled principle of law that the court cannot grant decree in a suit for declaration basing on the laches or lacunae if any on the part of the defendant.

7 The petitioner did not ask for the relief of identification of the suit schedule property in I.A.No.131 of 2015. Suffice it to say that an advocate commissioner cannot be appointed for collection of evidence. It is the duty of the petitioner to establish the identity of the suit schedule property. Appointing of an advocate commissioner for the purpose of identification of the suit schedule property is nothing short of collection of evidence, which is not permissible under law. The trial court considered the scope of Order 26 Rule 9 CPC and the scope of suit for declaration 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 impugned order, warranting interference of this court while exercising jurisdiction under Article 227 of the Constitution of India. The Civil Revision Petition lacks merits and bona fides.

8 In the result, the Civil Revision Petition is dismissed. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand dismissed.

T. SUNIL CHOWDARY, J.

Date: 24.09.2017

Kvsn

