

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CIVIL REVISION PETITION No.7020 OF 2018

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India assailing the order dated 03.07.2018 passed in I.A.No.228 of 2018 in O.S.No.131 of 2017 on the file of the Court of the Principal Junior Civil Judge at Miryalaguda.

2. Heard the learned counsel for the petitioners.

3. A perusal of the record reveals that the respondents have filed O.S.No.131 of 2017 on the file of the Court of the Principal Junior Civil Judge, Miryalaguda, against the petitioners seeking perpetual injunction in respect of the suit schedule property. During pendency of the suit, the petitioners filed I.A.No.228 of 2018, under Order XXVI Rule 9 read with Section 151 C.P.C., seeking to appoint an advocate commissioner. The respondents filed counter *inter alia* contending that the petition filed by the petitioners is not maintainable either on facts or in law. The trial Court, after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

4. Learned counsel for the petitioners strenuously submitted that the trial Court, without considering the scope of Order XXVI Rule 9 C.P.C., dismissed the petition. He further submitted that the impugned order is not sustainable either on facts or in law.

5. The point that arises for consideration is:

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

6. It is an admitted fact that the respondents have filed O.S.No.131 of 2017 on the file of the Court of the Principal Junior Civil Judge at Miryalaguda against the petitioners seeking perpetual injunction in respect of an extent of Ac.1.10 guntas in Survey No.114 of Kondrapole Village, Miryalaguda Mandal, Nalgonda District. The petitioners filed I.A.No.228 of 2018 to appoint the advocate commissioner in order to ascertain who is in possession of the suit schedule property. It is a settled principle of law that the Court cannot appoint an advocate commissioner to collect the evidence. It is needless to say that the burden of proof lies on the plaintiff 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. Once the plaintiff *prima facie* establishes that he is in possession of the suit schedule property, then the onus of proof shifts on the defendant to substantiate his stand. In the present case, the petitioners, who are the defendants in the suit, filed the present interlocutory application for appointment of the advocate commissioner in order to ascertain that they are in possession of the suit schedule property, which is not permissible under law. The trial Court considered the material available on record in right perspective and dismissed the petition. The trial Court specifically made an observation that an advocate commissioner cannot be appointed for the purpose of collection of the evidence. I am fully endorsing with the finding recorded by the trial Court. There is no illegality, irregularity or impropriety in the impugned order warranting interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

7. In the result, the Civil Revision Petition is dismissed at the admission stage. 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: 30.11.2018

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