

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.6770 of 2017

ORDER:

1 This petition is filed under Article 227 of the Constitution of India, challenging the order dated 01.11.2017 passed in I.A.No.620 of 2016 in O.S.No.26 of 2015 on the file of the Court of the Junior Civil Judge, Ponnur.

2 In spite of service of notice, the first respondent did not choose to appear and contest the Petition. Hence this Court is inclined to pass orders on merits of the case.

3 Heard the learned counsel for the petitioner.

4 A perusal of the record reveals that the first respondent filed O.S.No.26 of 2015 on the file of the Court of the Junior Civil Judge, Ponnur against the petitioner and respondent Nos.2 to 6 seeking perpetual injunction restraining the petitioner and the Electricity Department from erecting electric poles in the plaint schedule property an extent of 60 sq. yards. During the pendency of the suit, the petitioner filed I.A.No.620 of 2017 under Order 26 Rule 9 CPC seeking to appoint an Advocate Commissioner to measure the land purchased the first respondent with the help of a Mandal Surveyor. The first respondent filed counter *inter alia* contending that the petition is not maintainable either on facts or in law and hence the petition is liable to be dismissed. The trial Court, after affording a reasonable opportunity to both sides and basing on the material available on record, dismissed the petition. Hence the present Civil Revision Petition.

5 The point for consideration is whether there is any irregularity, illegality or impropriety in the impugned order?

6 The subject matter of the suit schedule property is an extent of 3 yards of the galli. The house property of the first respondent is not subject matter of the suit. The petitioner filed the petition for appointment of an Advocate Commissioner to measure the property of the first respondent with reference to his title deed dated 24.6.1976 and also to note down the physical features. As observed earlier, the property covered under the registered sale deed dated 24.06.1976 is not the subject matter of the suit. The petitioner has no right whatsoever seek appointment of Advocate Commissioner to measure the property of the first respondent which is not the subject matter of the suit. The trial Court considered this aspect in right perspective and dismissed the petition. The trial Court has assigned reasons much less cogent and convincing reasons to its findings. I am fully endorsing the findings of the trial Court. There is no illegality, irregularity or impropriety in the impugned order, warranting interference of this court in exercise of jurisdiction under Article 227 of the Constitution of India. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

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

T. SUNIL CHOWDARY, J

Date: 13.12.2018
Kvsn