

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

C.R.P.No.6906 OF 2017

ORDER:

This revision petition is filed under Article 227 of the Constitution of India challenging the docket order dated 22.11.2017 in I.A.No.672 of 2015 in O.S.No.121 of 2014 passed by the Senior Civil Judge, Sathupally, whereby the Court below received the interim report filed by the advocate commissioner and issued a direction to the Mandal Surveyor to subdivide the property and file report granting police aid to assist the commissioner by Police Aswaraopeta.

The main contention of the petitioner is that the suit was filed for perpetual injunction claiming that he is in possession and enjoyment of the property described within four boundaries of the schedule annexed to the plaint to an extent of Ac.0.14 guntas in Survey No.1244/5 and that he filed application to appoint an advocate commissioner to survey the petition schedule property and ascertain where the schedule property is located i.e. in Survey No.1244/3 or 1244/5 with the assistance of Mandal Surveyor, Aswaraopeta. Accepting the contention of the petitioner, the Court below appointed an advocate commissioner i.e. Miss Sukanya, Advocate, to survey the suit schedule property with the assistance of Mandal surveyor, Aswaraopeta as the Commissioner filed interim report, issued the above direction by docket order dated 22.11.2017. Questioning the same, the present revision petition is filed contending that in a suit for bare injunction, the commissioner cannot be appointed for subdivision of property.

During hearing, learned counsel for the petitioner contended that the scope of trial in a suit for perpetual injunction is limited and no order

can be passed to subdivide the property as it is beyond the scope of relief claimed and prayed to set aside the same.

Though Sri K.Lakshman, Advocate, appearing for the respondents, did not advance any argument.

When the impugned order was not challenged before this Court, the appointment of advocate commissioner for specific purpose mentioned in the impugned order cannot be disturbed and the present revision is filed challenging the impugned order dated 22.11.2017 where the Court below directed the Mandal Surveyor to subdivide the property and file report with the police assistance provided to the commissioner. In fact, no application was filed for the relief of subdivision of the property and police assistance to the commissioner to subdivide the property. The direction issued by the Court below on 22.11.2017 is beyond the scope of the trial of suit for injunction by the Court below in a suit for perpetual injunction and that too issuing such direction without any application or request made by learned counsel for the petitioner, the impugned order is apparently erroneous and the same is hereby set aside holding that the same is perverse.

In the result, the civil revision petition is allowed setting aside the order dated 22.11.2017 in I.A.No.672 of 2015 in O.S.No.121 of 2014 passed by the Senior Civil Judge, Sathupally. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this petition shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

23.03.2018
kvrm