

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.6891 OF 2017

ORDER:

Heard Sri V.S.R. Anjaneyulu, learned counsel for the revision petitioners - respondents - defendants, and Sri P. Rama Sharana Sharma, learned counsel for the sole respondent - petitioner - plaintiff, and perused the material on record.

2. In an application filed under Order - XXVI Rule - 9 of Code of Civil Procedure, 1908 (for short 'CPC'), by the respondent herein to appoint an Advocate-Commissioner to localise the suit land, note down the physical features, boundaries and the extent as per their respective documents with the assistance of Mandal Surveyor or Town Surveyor, which was resisted by the petitioners - defendants, the learned IV Additional District Judge (SC & ST), Srikakulam, allowed it on 06.10.2017, but the order passed by the Court below which is now under challenge reads thus:

“6.10.2017

Heard both sides counsels. The record. In the suit the trial is not yet commenced.

At this stage, if the advocate commissioner is appointed to visit the suit schedule property to note down the physical features, no prejudice will be caused to the respondents. The suit is filed for the relief of declaration of title of the property. Therefore, Sri T.L. Naidu, Advocate is appointed as

Advocate Commissioner to visit the suit schedule property and to note down the physical features of suit schedule property with the assistance of Mandal Surveyor and to file report with plan. He is directed to issue notice to both sides counsels and to obtain work memo if any, his fee is fixed at Rs.5000/ payable person.

Warrant returnable by 13.11.2017.”

3. The learned counsel for the revision petitioners would submit that the allegation that to remove the clouds over the right over the property, which is averred in paragraph No.3 of the affidavit of the respondent - plaintiff, is totally bereft of the relevant details and there was no necessity to appoint an Advocate-Commissioner. The learned counsel also points out that the order passed by the Court below reflects non-application of mind, in the sense, the order is cryptic and does not advert to what has been averred in the counter, more particularly, paragraph No.4 of the counter filed by the revision petitioners as respondents therein.

4. The learned counsel for the respondent would draw attention to the provisions of Rule - 9 of Order - XXVI of CPC, but, a cursory reading of the said provision would in unmistakable terms makes it obligatory on the part of the Court to arrive at an opinion that, a local investigation is requisite or proper for the purpose of elucidating any matter in dispute. When this expression is occurring, the Court below was not right in just writing that no prejudice would be caused to the

opposite party and allowing the application on such grounds. Thus, the requisites of Rule - 9 Order - XXVI of CPC are not adverted to at all. No reasons are to be found in the order passed by the Court below.

5. Hence, the order under challenge is set aside remitting the matter to the Court below directing it to dispose of the I.A., which is restored to its file, within a month from the date of receipt of a copy of the order by examining Rule - 9 of Order - XXVI of CPC, the petition averments and also the resistance offered by the respondents in their counter to arrive at the formation of opinion that the local investigation is must or not.

6. Accordingly, the Civil Revision Petition is allowed, at the admission stage itself. There shall be no order as to costs.

As a sequel thereto, Miscellaneous Applications, if any, pending in all the present revision petitions stand dismissed.

A. SHANKAR NARAYANA, J

January 2, 2018.

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