

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.6705 of 2017

ORDER:

This civil revision petition is filed under Article 227 of the Constitution of India, assailing the order dated 11.10.2017 passed in I.A.No.851 of 2017 in O.S.No.95 of 2014 on the file of the Court of I Additional District Judge, Nalgonda.

2. Heard the learned counsel for both the parties.

3. The facts leading to filing of the revision petition are, briefly, as follows: The petitioner filed the Interlocutory Application under Order XXVI Rule 9 read with Section 151 CPC seeking appointment of advocate commissioner. The respondents filed counter *inter alia* contending that the petition is not maintainable either on facts or in law. Basing on the material available on record, the trial Court dismissed the petition. Hence, the revision.

4. The point that arises for consideration in this revision is:

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

5. To substantiate the argument, learned counsel for the petitioner has drawn the attention of this Court to (1) **Haryana Waqf Board v Shanti Sarup**¹, wherein the Hon'ble apex Court held that *if there is any dispute with regard to the identity of the suit schedule property, the Court can appoint advocate commissioner*, and (2) **Badana Mutyalu v Palli Appalaraju**², wherein this Court held that *if there is any controversy as to identification, location or*

¹ (2008) 8 SCC 671

² 2103 (5) ALD 376

measurement of the suit schedule property, the Court can appoint advocate commissioner.

6. Let me consider the facts of the case on hand, in the light of the above legal principles. A perusal of the record reveals that the petitioner filed O.S.No.95 of 2015 on the file of the Court of I Additional District Judge, Nalgonda, against the respondents for declaration and consequential perpetual injunction in respect of an extent of Acs.3.04 guntas in survey No.134 of Nalgonda Revenue Village and Mandal. During the pendency of the suit, the petitioner filed I.A.No.1029 of 2014 under Order XXXIX Rules 1 and 2 of CPC seeking interim injunction against the respondents. The respondents filed I.A.No.1647 of 2016 under Order XXXIX Rules 1 and 2 of CPC seeking interim injunction against the petitioner. The trial Court allowed I.A.No.1029 of 2014 filed by the petitioner and dismissed I.A.No.1647 of 2016 filed by the respondents. While the things stood thus, the petitioner filed I.A.No.851 of 2017 under Order XXVI Rule 9 of CPC seeking appointment of advocate commissioner to measure and demarcate the entire land in survey No.134 of Nalgonda Revenue Village and Mandal.

7. In a suit for declaration, the plaintiff may succeed or fail, basing on the strengths and weaknesses of his case but not basing on the laches or lacunae if any on the part of the defendant. It is the case of the petitioner that he purchased an extent of Acs.3.04 guntas in survey No.134 under a registered sale deed dated 13.10.2013. In the plaint schedule, the petitioner categorically mentioned the boundaries of the suit schedule property. It is not

the case of the petitioner that there is a dispute with regard to the identity or boundaries of the suit schedule property. The total extent of survey No.134 of Nalgonda Rural Village is Acs.12.00. In the present petition, the petitioner is seeking appointment of advocate commissioner to measure the entire extent of the land in survey No.134. The entire extent of survey No.134 is not the subject matter of the suit. It is needless to say that the Court cannot appoint advocate commissioner to measure the land, which is not the subject matter of the suit. When there is no dispute with regard to identity or boundaries of the suit schedule property, there is no necessity to appoint advocate commissioner. Therefore, the case-law cited by the learned counsel for the petitioner are no way helpful to him.

8. Having regard to the facts and circumstances of the case, this Court is of considered view that the petitioner has not assigned reasons much less cogent and valid reasons to allow the petition. The trial Court considered the facts of the case on hand in right perspective and dismissed the petition. I am fully agreeing with the findings recorded by the trial Court. There is no illegality, irregularity or impropriety in the impugned order, to warrant interference of this Court while exercising the jurisdiction under Article 227 of the Constitution of India.

9. In the result, the civil revision petition is dismissed. Miscellaneous petitions if any pending in this revision petition shall stand closed.

T.SUNIL CHOWDARY, J.

Date: 25.9.2018
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