

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CIVIL REVISION PETITION No.7392 OF 2017

ORDER:

1 This Civil Revision Petition is filed under Article 227 of the Constitution of India aggrieved by the order dated 09.11.2017 passed in I.A.No.305 of 2017 in O.S.No.3041 of 2016 on the file of the Court of the VIII Junior Civil Judge, City Civil Court, Hyderabad.

2 Heard the learned counsel for the petitioner and respondents and perused the record.

3 A perusal of the record reveals that the respondents herein filed O.S.No.3041 of 2016 on the file of the Court of the VIII Junior Civil Judge, City Civil Court, Hyderabad against the petitioner for mandatory injunction, directing the petitioner to restore the removed wooden slab in its place i.e. 5 ft. from ground floor.

4 During the pendency of the suit, the respondents filed I.A.No.305 of 2017 under Order XXVI Rule 9 CPC for appointment of advocate commissioner to inspect the suit schedule property. The trial court allowed that petition. Hence the present revision petition by the petitioner/defendant.

5 It is the case of the respondents that the petitioner removed the wooden slab with an ulterior motive. The trial court allowed the petition observing that in a suit for mandatory injunction, appointment of advocate commissioner is very much warranted to note the correct facts. The trial Court has not considered the scope of the suit. It appears that the trial court has not considered the plea taken by the petitioner/defendant in his written statement. No specific finding was given by the trial Court with regard to the

existence or non-existence of wooden slab. At the time of arguments, both counsel submitted that there is some ambiguity in the order of the trial Court.

6 Having regard to the facts and circumstances of the case, this Court is of the considered view that this is a fit case to set aside the impugned order and remand the matter to the trial Court.

7 Accordingly, this Civil Revision Petition is allowed, setting aside the order dated 09.11.2017 passed in I.A.No.305 of 2017 in O.S.No.3041 of 2016 on the file of the Court of the VIII Junior Civil Judge, City Civil Court, Hyderabad. The matter is remitted to the trial Court with a direction to pass orders in I.A.No.305 of 2017 in O.S.No.3041 of 2016, on merits, after taking into consideration the pleadings in the plaint and the averments made in the written statement. No order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand dismissed.

T.SUNIL CHOWDARY, J

Date: June 28, 2018
Kvsn