

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.1063 of 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/plaintiff, challenging the order, dated 29.01.2019, passed in I.A.No.672 of 2017 in O.S.No.291 of 2015 by the Senior Civil Judge, Medchal, Ranga Reddy District, whereby, the petition filed by the petitioner/plaintiff under Order XVI(a) Rule 14 of CPC to summon the Advocate Commissioner by name B.S.Chakravarthy to depose in the subject suit, was dismissed.

2. Heard the learned counsel for both sides and perused the record.

3. The learned counsel for the petitioner/plaintiff would submit that the Advocate Commissioner appointed to note down the physical features of the suit schedule property, had submitted his report to the Court below on 19.09.2011 with regard to existence of two bore wells in the suit schedule property. The said report is relevant and has bearing on the merits of the case. So, it is necessary to examine the said Advocate Commissioner to exhibit his report and sketch plan annexed to the report. The Court below erroneously dismissed the subject interlocutory application and ultimately

prayed to set aside the order under challenge and allow the Civil Revision Petition.

4. On the other hand, the learned counsel for the respondents/defendants supported the impugned order and contended that since the Advocate Commissioner appointed has already submitted his report and it has become part of the record, there is no need to summon and examine him for the purpose of exhibiting his report and ultimately prayed to dismiss the Civil Revision Petition.

5. Admittedly, the Advocate Commissioner appointed to note down the physical features of the suit schedule property has submitted his report to the Court below on 19.09.2011, stating about the existence of two bore wells in the suit schedule property. No objections were filed against the Advocate Commissioner's report. However, in the cross examination, the 1st respondent/1st defendant stated that there were no bore wells in the suit schedule property. The revision petitioner/plaintiff wanted to get this aspect on record by marking the advocate commissioner's report. The Court below had recorded in its findings that for the purpose of exhibiting the Advocate Commissioner's report, advocate commissioner need not be examined.

6. When there is specific denial by the 1st respondent/1st defendant in his cross examination that there are no bore wells in the suit schedule property, for better appreciation of

facts and circumstances of the case and to reach at a justifiable conclusion, the examination of the advocate commissioner is necessary. The Court below has not properly exercised the jurisdiction vested in it. The impugned order suffers from infirmity and is liable to be set aside.

7. Accordingly, the impugned order is set aside. The subject Interlocutory Application No.672 of 2017 filed by the revision petitioner/plaintiff before the Court below to summon the advocate commissioner by name B.S.Chakravarthy to depose in the suit, stands allowed as prayed for. The Court below is directed to complete the exercise of examining the said advocate commissioner within a period of fifteen (15) days from the date of receipt of a copy of this order.

8. The Civil Revision Petition is, accordingly, allowed. There shall be no order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. SHAMEEM AKTHER, J

27th September, 2019
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