

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.1427 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 08.02.2019, passed in I.A.No.10 of 2019 in O.S.No.6 of 2017 on the file of II Additional District and Sessions Judge (FTC), Mancherial, whereby, the petition filed by the petitioner/plaintiff under Order XXVI Rule 9 of C.P.C. to appoint commissioner to measure the suit schedule property excluding the encroachment made by the third parties, was dismissed.

2. Heard the learned counsel for the petitioner/plaintiff and perused the record.

3. The learned counsel for the petitioner/plaintiff submits that the appointment of advocate commissioner is necessary to find out the area available and pay the sale consideration accordingly.

4. It is pertinent to state that the learned Additional District Judge, while dealing with the subject matter of the interlocutory application, recorded a finding that there is no specific mention in the agreement of sale, dated 18.01.2013, to pay the sale consideration only to the available land and that the petitioner/plaintiff has to pay total sale consideration agreed, if he wants to seek specific performance of the agreement of sale, in the event of decree of suit.

5. It is relevant to state that the advocate commissioner is not the right person to measure the land. It is not appropriate to discuss the terms and conditions mentioned in the agreement of sale, dated 18.01.2013. The Court below rightly dismissed the subject interlocutory application. There is no illegality or infirmity in the order under challenge. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

6. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

\_\_\_\_\_  
Dr. SHAMEEM AKTHER, J

30<sup>th</sup> August, 2019  
Bvv

