

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.R.P.Nos.2412, 2415 & 2626 of 2019

COMMON ORDER:

Since the facts of the case, issues involved and the parties to the litigation are identical, these three Civil Revision Petitions are being disposed of by this common order.

2. CRP Nos.2412, 2415 and 2626 of 2019 are filed under Article 227 of the Constitution of India by the petitioner/defendant, challenging the common order, dated 24.09.2019, passed in I.A.Nos.962, 963 and 964 of 2019 in O.S.No.110 of 2012, by the II Additional District Judge at Warangal, whereby, the applications filed reopen the defendant's evidence (I.A.No.963/2019), to recall D.W.1 for marking the document, i.e., original proposed Layout pertaining to Survey No.331/A1, issued by Gram Panchayat, Rampur village of Dharmasagar Mandal, Warangal District (I.A.No.964/2019) and to receive the aforementioned document in evidence (I.A.No.962/2019), were dismissed.

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

3. The learned counsel for the revision petitioner/defendant would contend that the subject document, i.e., original proposed Layout pertaining to Survey No.331/A1, issued by Gram Panchayat, Rampur village of Dharmasagar Mandal, Warangal District, is necessary for determination of the subject matter of

the suit, where the respondent/plaintiff is required to identify the suit schedule property. The suit schedule property was made into house plots in the year 2001 and the layout was obtained in the same year. For appreciation of the facts and circumstances of the case and for specific identification of the subject matter of the suit, the subject document is necessary. Though the subject document is filed at the stage of arguments in the suit, the Court below ought to have received the same in evidence and ultimately prayed to set aside the common order under challenge and allow all the Civil Revision Petitions as prayed for.

4. On the other hand, the learned counsel for the respondent/plaintiff would contend that in a suit for specific performance of contract, the plaintiff has to identify the suit schedule property. The subject applications were filed at a belated stage, after a long gap. There is no foundation with regard to the subject document in the written statement filed by the revision petitioner/defendant in April, 2013. The Court below discussed the merits of the subject interlocutory applications and ultimately dismissed the same. The Court below is justified in passing the impugned common order. There is nothing to interfere with the same and ultimately prayed to sustain the impugned common order and dismiss all the Civil Revision Petitions.

5. Admittedly, the subject suit for specific performance of the contract was filed in the year 2012. The written statement was filed by the revision petitioner/defendant in April, 2013 in which,

there is no whisper with regard to the land in Survey No.331/A1, situated at Rampur Village, Dharmasagar Mandal, Warangal District, and obtaining the layout to that effect. The subject interlocutory applications are filed to reopen the evidence of D.W.1, to recall D.W.1 for marking of the subject document in evidence and to receive the subject document in evidence. The subject suit is coming up for arguments before the Court below. The Court below, while dealing with the subject interlocutory applications, recorded a finding that the existence of the subject document is not found in the written statement. When a dispute is raised with regard to the identity of the suit schedule property, it is required to be proved or disproved by the parties to the litigation by leading cogent and convincing evidence. The Court below also recorded a finding in the impugned common order that the subject interlocutory applications are filed to fill up the lacuna in the case. This Court is in agreement with the findings recorded by the trial Court in the impugned common order. In a suit for specific performance of contract, one of the requirements would be the identification of the suit schedule property. The parties have to lead cogent and convincing evidence to substantiate the same, particularly, the respondent/plaintiff. The subject document is not essential for determination of the subject matter of the suit. Furthermore, the subject document is sought to be received at a belated stage, without there being any foundation. Under these circumstances, the Court below is justified in passing the impugned common order. No perversity is found in the impugned common order and there is nothing to

take a different view. These Civil Revision Petitions are devoid of merit and are liable to be dismissed.

6. In the result, these three Civil Revision Petitions are dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these Civil Revision Petitions, shall stand closed.

Dr. SHAMEEM AKTHER, J

12th December, 2019
Bvv

