

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.2869 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 14.10.2019, passed in I.A.No.535 of 2019 in O.S.No.529 of 2010 by the Principal Junior Civil Judge, Ranga Reddy District at L.B.Nagar, whereby, the petition filed by the revision petitioner/plaintiff under Order XXVI Rule 9 read with Section 151 of CPC praying to appoint an advocate commissioner to note down the physical features of the suit schedule property, was dismissed.

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

3. The learned counsel for the revision petitioner/plaintiff would contend that the relief sought in the subject interlocutory application is well within the jurisdiction of the Court below. The subject interlocutory application was filed for appointment of advocate commissioner to note down the physical features of the suit schedule property and the adjoining land. Such exercise is permissible. Though the subject interlocutory application was filed at the time of arguments in the suit, the Court below ought to have allowed the subject interlocutory application. The Court below erred in dismissing the subject interlocutory application on the ground of delay. There are no merits in the order under challenge and ultimately prayed to set aside the order under

challenge and allow the subject I.A.No.535 of 2019 as prayed for. In support of his contentions, the learned counsel had relied on a decision of the Hon'ble Apex Court in *Haryana Waqf Board Vs. Shanti Sarup and others*¹ and a decision of the erstwhile Common High Court for the states of Telangana and Andhra Pradesh in *K.Dayanand Vs. P.Sampath Kumar*².

4. On the other hand, the learned counsel for the respondents/defendants would contend that the subject interlocutory application was filed belatedly. There is no doubt that the Court below has got power to appoint an advocate commissioner to note down the physical features of the suit schedule property, in a suit for perpetual injunction. The subject suit was dismissed for default for a period of two years. Later, it was restored to file. The revision petitioner/plaintiff is filing applications one after the other to protract the litigation. The subject interlocutory application is filed at the stage of arguments in the suit. The Court below, assigning number of reasons, is justified in dismissing the subject interlocutory application. There is nothing to interfere with the order under challenge and ultimately prayed to dismiss the Civil Revision Petition.

5. There is no dispute with regard to the power of the Court below in appointing an advocate commissioner under Order XXVI Rule 9 of CPC to note down the physical features of the suit schedule property, in a suit for perpetual injunction. Admittedly,

¹ (2008) 8 SCC 671

² Manu/AP/2249/2014

the subject suit was filed in the year 2010 and it has been kept pending since then. Though it is submitted by the respondents/defendants before this Court that the suit was dismissed for default for a period of two years and later it was restored to file, there is no denial on this aspect by the revision petitioner/plaintiff. The prayer in the subject interlocutory application was to appoint an advocate commissioner to note down the physical features of the suit schedule property as well as the property claimed by the respondents/defendants. Such prayer is beyond the scope of the subject suit. The subject interlocutory application is filed in the year 2019. There is no explanation from the revision petitioner/plaintiff with regard to the delay caused in filing the subject interlocutory application. Furthermore, there is no explanation as to why the subject interlocutory application was filed at the time of arguments in the suit. One who wants to invoke the jurisdiction of the Court under Order XXVI Rule 9 of CPC to appoint an advocate commissioner to note down the physical features of the suit schedule property, he/she has to move an application within a reasonable time. Such applications are not permissible at the fag end of the trial, without proper explanation for the delay caused. The Court below, while determining the subject interlocutory application, held that the subject interlocutory application was filed in order to fill up the lacuna in the case of the revision petitioner/plaintiff. This Court is in agreement with the findings recorded by the Court below. There cannot be any dispute with regard to the law laid down by the Hon'ble Apex

Court and this Court in the decisions relied by the learned counsel for the revision petitioner/plaintiff *supra*. However, in the given circumstances, since the subject interlocutory application was filed belatedly to fill up the lacuna in the case of the revision petitioner/plaintiff, the Court below rightly declined to grant the relief sought by the revision petitioner/plaintiff. There is no perversity in the order under challenge. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

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

Miscellaneous petitions, if any, pending in this CRP, shall stand closed.

23rd December, 2019
Bvv

Dr. SHAMEEM AKTHER, J

