

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.1388 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the petitioner/plaintiff, challenging the order, dated 01.02.2017, passed in I.A.No.258 of 2014 in I.A.No.92 of 2011 in O.S.No.40 of 2011, by the Principal Junior Civil Judge, Sathupally, whereby, the petition filed by the respondents/defendants under Order XXVI Rule 9 of CPC seeking to appoint an advocate commissioner to ascertain the survey number and extent of suit schedule land with the help of Mandal Surveyor, was allowed.

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 documents filed by the revision petitioner/plaintiff in the main suit are sufficient to decide the dispute between the parties to the litigation. The appointment of advocate commissioner is only to gather/collect evidence, which is not permissible. The Court below is not justified in passing the impugned order and ultimately prayed to set aside the order under challenge and allow the Civil Revision Petition as prayed for.

4. On the other hand, the learned counsel for the respondents/defendants would contend that no prejudice would be caused to the revision petitioner/plaintiff in appointing an advocate commissioner. Such a course is permissible in a suit for perpetual

injunction and ultimately prayed to sustain the impugned order and dismiss the Civil Revision Petition.

5. In the given circumstances, it is appropriate to state that while dealing with the subject matter of the subject interlocutory application, the Court below, after appreciating the contentions of both the parties, held that the relief of appointment of an advocate commissioner would depend on the facts and circumstances of each case. An advocate commissioner cannot be appointed to ascertain as to who is in possession of the suit schedule land, which certainly amounts to collection/gathering of evidence. But the object of the subject interlocutory application is only to ascertain the survey number of suit schedule land and its identification with the help of Mandal Surveyor. Such a course would no way overlap the main issue of possession and accordingly, granted the relief of appointment of advocate commissioner. This Court is in agreement with the findings recorded by the Court below. There is no perversity in the impugned order. 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.

18th December, 2019
Bvv

Dr. SHAMEEM AKTHER, J