

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION No.2195 of 2013

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the revision petitioner/plaintiff, challenging the order, dated 25.03.2013, passed in I.A.No.384 of 2012 in O.S.No.116 of 2012, by the Junior Civil Judge, Kollapur, whereby, the subject I.A.No.384 of 2012 filed under Order XXVI Rule 9 of CPC by the revision petitioner/plaintiff, requesting to appoint an advocate commissioner to note down whether there is any other alternative way to go to the eastern side land of the revision petitioner/plaintiff in Sy.No.230/U.1 admeasuring Ac.0.20 gts, from the main road through RTC Depot site of the respondent No.1/defendant No.1 on eastern side adjoining to the site of Sri Ayyappa Swamy temple site and also to note down other physical features of the disputed points i.e. the western side old way, was partly allowed. The operative portion of the impugned order reads as follows:

“This petition is partly allowed for noting down the physical feature of the disputed suit schedule property including the existing and old ways if any connecting the suit schedule property. Accordingly Sri Madhu Sudhan Rao, Advocate, is appointed as commissioner to note down the physical feature of the suit schedule property including existing and old ways connecting the suit schedule property. His fee fixed Rs.2000/- directing payable by petitioner. Warrant returnable by 30.04.2013.”

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

3. The learned counsel for the revision petitioner/plaintiff would submit that the Court below ought to have appointed an advocate commissioner to find out the existing passage connecting to the suit schedule property and ultimately prayed to allow the subject I.A.No.384 of 2012 as prayed for.

4. As seen from the record, in the impugned order, dated 25.03.2013, the Court below held that an advocate commissioner cannot be appointed for collection of evidence, i.e., to find out whether there is any alternative passage for ingress and egress to the eastern side land of suit schedule property and that such an exercise by the advocate commissioner is not permissible and that at best, an advocate commissioner can be appointed to note down physical features. This Court is in agreement with the findings recorded by the Court below in the impugned order. There is no legal infirmity or perversity in the order under challenge and there is nothing to take a different view. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

5. In the result, 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.

05th December, 2019
Vvr

Dr. SHAMEEM AKTHER, J