

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.7743 of 2018

ORDER :

Heard the counsel for petitioner. None appears for respondents.

2. This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.26.10.2018 passed in I.A.No.720 of 2018 in O.S.No.197 of 2013 on the file of I Additional District and Sessions Judge, Ranga Reddy District, at L.B. Nagar.

3. The petitioner herein is plaintiff in the above suit.

4. He filed the said suit for partition of the plaint schedule properties, and for allotment of 14/88th share to him.

5. Written statement was filed by respondent nos.1, 2, 4 and 5 opposing the grant of relief of partition.

6. The petitioner filed I.A.No.347 of 2018 for a direction to respondent nos.1 to 4 to deposit a sum of Rs.40,000/- towards rent, and for a direction to 8th respondent to deposit rent of Rs.60,000/- per month from April, 2018 onwards to the credit of the suit.

7. Counter-affidavit was filed by respondents in that application also opposing the said application.

8. The petitioner then filed I.A.No.720 of 2018 under Order XXVI Rule 13 read with Section 151 of Civil Procedure Code to appoint an Advocate-Commissioner to note down the physical features of the

building of the plaint schedule property, and also to submit details of the rents which the plaint schedule property would fetch.

9. The said application was opposed by the 4th respondent who contended that the plaint schedule property consists of a house and three *mulgies*. He denied that 8th respondent is paying rent of Rs.20,000/- for each mulgi and that he is paying Rs.60,000/- per month. It was contended that during the lifetime of father of petitioner and 4th respondent a house was purchased in the name of petitioner in Chandrayanagutta, Hyderabad; and that the same was sold by petitioner who purchased another house at Waheed Nagar, Old Malakpet. It was also contended that during the life time of father of petitioner and 4th respondent, a Will was executed by the father on 16.03.1999 bequeathing the plaint schedule property to the mother of petitioner and 4th respondent; that she is the absolute owner of the property, and petitioner and others have no concern with the said property.

10. By order dt.26.10.2018, the Court below dismissed I.A.No.720 of 2018.

11. The Court below observed that in the plaint, petitioner himself contended that the rents for three mulgies were Rs.10,000/- per month. But in I.A.No.720 of 2018, he has raised a plea that they would fetch Rs.20,000/- per month, and when he himself gave contradictory statements with regard to the quantum of rent, the same

cannot be relied upon unless full trial takes place and evidence is adduced; and so, the petition for appointment of Advocate-Commissioner cannot be entertained.

12. Challenging the same, the present Civil Revision Petition is filed.

13. Though the counsel for petitioner sought to contend that the Court below had erred in not appointing an Advocate-Commissioner as sought by the petitioner, I am of the opinion that there being no dispute about the plaint schedule properties' existence, location and the number of mulgies attached to it, the application by petitioner is misconceived. Also, when there is serious dispute about the right of petitioner to claim partition and when the property is said to be in the enjoyment of his own mother, and there is also a dispute about the quantum of rent which is required to be decided in the suit after full trial, the petitioner cannot insist on the appointment of an Advocate-Commissioner at this point of time.

14. Therefore, I see no error of jurisdiction in the order passed by the Court below warranting appointment of an Advocate-Commissioner as sought by the petitioner.

15. Accordingly, the Civil Revision Petition is dismissed at the stage of admission. No order as to costs.

16. The Court below is directed to expedite the disposal of I.A.No.347 of 2018 and decide the same within a period of three (03) months from the date of receipt of copy of the order.

17. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23.01.2019

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