

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Civil Revision Petition No.2159 of 2019

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the revision petitioners/defendants, challenging the order, dated 11.07.2019, passed in I.A.No.1031 of 2018 in I.A.No.849 of 2018 in O.S.No.240 of 2018 by the Principal Junior Civil judge, Kalwakurthy, wherein, the petition filed by the respondents herein/plaintiffs, under Order XXVI Rule 9 of C.P.C., to appoint Advocate Commissioner to note down physical features of suit schedule property and prepare plan, was allowed.

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

3. Learned counsel for the petitioners/defendants would contend that in the subject suit, the respondents/plaintiffs filed a petition in I.A.No.849 of 2018 requesting to grant ad-interim injunction restraining the appellants/defendants from using the suit schedule property to reach the land of the respondents/plaintiffs. The Court below vide order dated 11.03.2019 dismissed the said I.A.No.849 of 2018. During pendency of said I.A.No.849 of 2018, the subject petition in I.A.No.1031 of 2018 was filed by the respondents herein/plaintiffs requesting to appoint Advocate Commissioner to note down physical features of suit schedule land and prepare plan and the Court below allowed the said I.A.No.849 of 2018 vide impugned order dated 11.07.2019. The Court below ought not have allowed the subject

I.A.No.1031 of 2018 appointing Advocate Commissioner which amounts to collection of evidence with regard to the alleged pathway in existence which is not permissible under law. Therefore, the Court below is unjustified in passing the impugned order and ultimately prayed to set aside impugned order by allowing the Civil Revision Petition. In support of his contentions, the learned counsel relied on a decision of the erstwhile High Court of Andhra Pradesh, at Hyderabad in Batchu Narayan Rao Vs. Batchu Venkata Narasimha Rao¹.

4. On the other hand, the learned counsel for the respondents/ plaintiffs would contend that the subject petition was filed only to note down the physical features of the suit schedule property. The Court below is justified in passing the impugned order and ultimately prayed to sustain the impugned order.

5. In view of the submissions made by both sides, the point for determination in this revision is as follows:

“Whether the impugned order, dated 11.07.2019, passed in I.A.No.1031 of 2018 in I.A.No.849 of 2018 in O.S.No.240 of 2018 by the Principal Junior Civil Judge, Kalwakurthy, is liable to be set aside?”

6. The Court below having heard the submissions of both sides and after elaborately discussing the material on record, was pleased to allow the subject I.A.No.1031 of 2018 and appoint Advocate Commissioner to note down physical features

¹ MANU/AP/0356/2010

of the suit schedule property. As alleged by the respondents herein/plaintiffs, There is a dispute with regard to the existence of path way, which is said to be the only path way for the respondents herein/plaintiffs, to reach their lands. The appointment of an Advocate Commissioner would help the Court to come to a just conclusion for proper adjudication of the matter. The Appointment of Advocate Commissioner to note down the physical features is within the competence of the Court and it does not amount to collection of evidence. On the other hand, it helps the Court to understand better the litigation and determine the dispute between the parties to the litigation. In Batchu Narayan Rao's case (supra), relied upon by the learned counsel for the petitioners/defendants, it was observed as follows:

Para-9: "The occasion for the petitioner to file successive applications for appointment of a fresh Commissioner arose on account of the order passed in I.A.No.384 of 2007 and the report submitted therein. Once it is found that the order passed in I.A.No.384 of 2007, and in fact, the prayer made therein, is beyond the scope of the suit, this Court cannot remain oblivious to it. Even now, the respondent can modify the prayer therein in such a way that it does not exceed the scope of the suit and if the circumstances warrant, the trial Court can consider the same and pass appropriate orders."

The facts and circumstances of the above decision are distinguishable from the case on hand and hence the said decision is not helpful to the case of the petitioners/defendants. The Court below is justified in passing the impugned order.

There is no legal infirmity in the order under challenge. The Civil Revision Petition is devoid of merit and is liable to be dismissed.

7. 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.

Dr. SHAMEEM AKTHER, J

25th February, 2020
Vvr

