

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CIVIL REVISION PETITION No.2407 of 2022

ORDER:

Challenge in this Civil Revision Petition is the order that is rendered by the Court of Senior Civil Judge, Zaheerabad, in I.A.No.304 of 2022 in O.S.No.29 of 2010, dated 22.7.2022.

2. Heard Sri Sridhar Lonkala, learned counsel for the revision petitioners, as well as Sri S.R.Deshmukh, learned counsel for the respondent.

3. The revision petitioners, who are the defendants to the suit-O.S.No.29 of 2010, moved an application *vide* I.A.No.304 of 2022 seeking the Court to appoint an Advocate-Commissioner to survey the land in Survey No.22 of Narayankhed Village, Sangareddy District. The trial Court through the impugned order negated their request and therefore, the petitioners therein filed the present Civil Revision Petition.

4. Making his submission, learned counsel for the revision petitioners states that Survey No.22 consists of Acs.19.13

guntas of land and in case, the said property is surveyed and the physical features of the said property is noted down by the Advocate-Commissioner, the dispute between the parties can be resolved by the Court efficiently and therefore, the trial Court ought to have allowed the said application, but it did not do so.

5. Contrary submission is made by the learned counsel for the respondent.

6. Learned counsel for the respondent states that an Advocate-Commissioner was appointed by the trial Court in the year 2012 when the respondent/plaintiff moved an application seeking such a relief *vide* I.A.No.261 of 2011 and the Advocate-Commissioner surveyed the land which is located in Survey No.22/1 of Narayankhed Village, Medak District, with the help of Mandal Surveyor, Narayankhed, and submitted his report and therefore, there is no requirement for appointment of another Advocate-Commissioner for surveying some other property. Learned counsel for the respondent also submits that the relief sought for is beyond the subject matter of the suit.

7. A perusal of record goes to show that the suit schedule property is 800 square yards of land in Survey No.22/1 of Narayankhed Village. It is not in dispute that earlier, an Advocate-Commissioner was appointed to survey the land and a report was accordingly submitted by the Advocate-Commissioner. Admittedly, the suit was filed in the year 2010. No application for appointment of Advocate-Commissioner was filed by the revision petitioners herein, who are the defendants to the suit, for a long period of 12 years. Also, by the material available on record, it is clear that the Advocate-Commissioner appointed by the trial Court had submitted his report after serving Work Memos to both sides and after conducting the physical examination of the property. Why the revision petitioners have not taken any steps for moving another application for appointment of Advocate-Commissioner to survey the total extent of land present in Survey No.22 of Narayankhed Village is not stated anywhere.

8. Though the Code of Civil Procedure deals with appointment of Advocate-Commissioner *vide* Sections 75 to

78 and Order XXVI CPC, the appointment of Advocate-Commissioner, for noting down the physical features or for allied aspects, is only to aid the Court for just disposal of the *lis* in question.

9. In the case on hand, no such requirement is felt by the trial Court. Further, the trial Court observed that the plaint schedule property is located in Survey No.22/1 of Narayankhed Village, but not in Survey No.22. The requirement of appointment of Advocate-Commissioner for conducting survey of the land in Survey No.22 is not indicated anywhere in the application moved by the revision petitioners herein. Therefore, this Court is of the view that the trial Court did not err in dismissing the application filed seeking for appointment of Advocate-Commissioner to survey the land in Survey No.22 of Narayankhed Village.

10. Therefore, this Civil Revision Petition is dismissed, confirming the order that is rendered by the Court of Senior Civil Judge, Zaheerabad, in I.A.No.304 of 2022 in O.S.No.29 of 2010, dated 22.7.2022..

11. As a sequel, miscellaneous petitions pending, if any, shall stand closed. Interim order granted by this Court on 04.11.2022, shall stand vacated.

16.02.2023
dr

Dr. JUSTICE CHILLAKUR SUMALATHA