

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION No.30 of 2015

ORDER:

This revision is preferred against the order passed by the VIII Additional District Judge, Chittoor, in I.A.No.99 of 2011 in A.S.No.134 of 2005 dated 27.10.2014.

The petitioners herein are the defendants in O.S.No.292 of 2000, and the appellants in A.S.No.134 of 2005. O.S.No.292 of 2000 was filed by the respondent – plaintiff for declaration of title and delivery of possession of the suit schedule property. The said suit was decreed by order dated 22.07.2005. Aggrieved thereby, the petitioners herein preferred A.S.No.134 of 2005. When the matter was pending before the Appellate Court, the petitioners filed the present application in the year 2011 (six years after they preferred the appeal, and 11 years after they filed the suit) for appointment of an Advocate Commissioner to inspect the schedule property, and note down the physical features.

The Court below, in the order under revision, held that the respondent had filed the suit on 18.04.2000; the suit was decreed on 22.07.2005; the present application was filed six years after filing the appeal; the only ground urged by the petitioners was that they had disputed the identity of the suit property in the lower Court, for which appointment of an Advocate Commissioner was necessary.

By the order under revision, the Appellate Court held that these contentions necessitated rejection as the Trial Court had noted that DW.1 (third petitioner herein) had admitted that the boundaries shown in the suit were correct; the Trial Court had

observed that there was no dispute with regards the location of the suit properties, and its boundaries; that being so, the petitioners could not say, after a lapse of six years from the date of the appeal, that the identity of the suit property was disputed before the lower Court; appointment of an Advocate Commissioner could not be sought by a party for collection of evidence, more particularly six years after filing the appeal; and the application, for appointment of an Advocate Commissioner, was devoid of merits.

Before this Court, Sri L.J.Veera Reddy, Learned Counsel for the petitioners, would contend that the Court below had erred in rejecting the application on the ground that the petitioners desired to collect evidence; there exists a bore-well and a water-shed in the suit schedule property; in order to inspect these items, a request was made for appointment of an advocate commissioner; and merely because the application was filed six years after the appeal was preferred, did not bar an advocate commissioner from being appointed under Order 26 Rule 9 CPC.

In the light of the admission of the third petitioner herein that the boundaries shown in the suit schedule property were correct, and as the application to appoint an advocate commissioner was filed 11 years after the suit was filed in the year 2000, and six years after the appeal was filed in 2005, the Court below has rightly rejected the request for appointment of an Advocate Commissioner holding that the appointment of an Advocate Commissioner was sought for collection of evidence.

The submission, of Sri L.J.Veera Reddy, Learned Counsel for the petitioners, that the application was filed to examine whether there exists a bore-well and a watershed, does not merit

acceptance as, in a suit for declaration of title and delivery of possession, the issue involved is whether or not the plaintiff had title over the suit schedule property and whether they are entitled for delivery of possession. Existence or non-existence of a bore-well or a water-shed is no of consequence.

The jurisdiction which this Court exercises, under Article 227 of the Constitution of India, is supervisory and not appellate, and save patent illegality or substantial injustice being caused to the petitioner, no interference is called for. The order of the Court below neither suffers from any patent illegality nor can the petitioners be said to have suffered injustice thereby.

The Civil Revision Petition fails and is, accordingly, dismissed. Miscellaneous petitions pending, if any, shall stand dismissed.

RAMESH RANGANATHAN,J

Date:30.01.2015
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