

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 454 of 2015

DATED 3rd November, 2015

BETWEEN

Kora Harikrishna

...Petitioner

And

Gummala Veera Bharathi @ Bojji and anr

...Respondents,.

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No.454 OF 2015

ORDER:

The plaintiff in O.S.No.360 of 2009 on the file of the learned II Additional Junior Civil Judge, Kakinada is the petitioner in the present Civil Revision Petition. He filed the said suit seeking mandatory injunction directing the defendants to remove the RCC beam laid in EFGH portion of plaint plan and restore the said portion of joint passage to its original condition and to grant permanent injunction. An Advocate Commissioner was appointed and he visited the site. D.W.1 was cross examined on 27.10.2014 elaborately on various aspects of the matter. The said witness mentioned in his cross examination with regard to inspection made by the

Advocate Commissioner also. After submission of report by the Advocate Commissioner, the petitioner herein filed two applications in I.A.No.720 and 721 of 2014 to re-call D.W.1 for further cross examination by reopening the evidence. The said applications were dismissed by the Court below through common order dated 28.11.2014. The present Civil Revision Petition is filed against the order in I.A.No. 720 of 2014.

The Court below observed that the suit is coming up for arguments. At this juncture, the petitioner herein filed the aforesaid two interlocutory applications on the ground that there was variation in the measurements mentioned in the sale deed dated 3.12.2008 and execution of warrant by the Advocate Commissioner and these measurements are not available at the time of cross examination of DW.1. The Court below perused the cross-examination of DW.1 and noticed that there are questions relating to the document dated 3.12.2008 and visiting of the site by the Advocate Commissioner. The trial Court dismissed the application on the ground that the petitioner filed the application only to prolong the matter which is pending for the last six years and also on the ground that request of the petitioner to recall the witness is only to fill up the lacunas in the cross examination.

The learned Counsel for the petitioner submits that the petitions are not filed for filling up lacunas, but only to further cross examine the witness with regard to variations in the measurements.

By the time of cross examination of DW.1, the Advocate Commissioner already inspected the site and sale deed dated 3.12.2008 was available to the plaintiff/petitioner at the time of cross examination and the Advocate Commissioner also filed his report before the Court below. In that view of the matter, it is open to the plaintiff/petitioner to raise contentions with regard to variations in measurements based on the measurements mentioned in the sale deed and report submitted by the Advocate Commissioner. I do not see any error or irregularity in the order of the Court below warranting interference in this Civil Revision Petition.

The Civil Revision Petition is dismissed at the admission stage. Miscellaneous petitions pending consideration if any in the Civil Revision petition shall stand closed in consequence. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 3rd November, 2015.

Msnr_x