

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.5105 of 2015

Date: 31-12-2015

Between:

P. Kailash Nath

.... Petitioner

AND

P. Balakrishna and 2 others

.... Respondents

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No.5105 of 2015

ORDER:

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The petitioner is the defendant in O.S.No.1638 of 2015 on the file of VII Junior Civil Judge, City Civil Court, Hyderabad. The said suit was filed for declaration that the iron gate erected by the defendant at North-West corner of the schedule property as shown in rough sketch and marked with Red colour as illegal and unauthorised. In the said suit, the petitioner herein filed I.A.No.243 of 2015 for appointment of an Advocate Commissioner to note down the physical features of the schedule property pending disposal of the main suit. But the said application was dismissed holding as follows:

".....The Supreme Court as well as Appellate Courts time and again cautioning the Courts, in the injunction suits the Court cannot delegate the power to the Commissioner to see who is in possession of the property and also Commissioner cannot investigate into the disputed question of fact of possession.

This Court is not inclined to appoint Commissioner either for the purpose sought by the petitioner/defendant.

Since there is no dispute about the existence of Will deed and also common passage of the parties, it is for the parties to prove their respective cases by adducing evidence for themselves. It is not possible for the Court to collect the evidence for the purpose. Further the appointment of Advocate Commissioner would no way serve the purpose and it would not be helpful to the Court to decide the dispute. In the facts and circumstances noticed above, I am not inclined to appoint the Advocate Commissioner for the purpose sought by the petitioner/ defendant. Hence, the petition is liable to be dismissed.

In the result, the petition is dismissed but without costs.”

I have gone through the sketch filed along with the plaint and the averments made in the affidavit filed in support of the application for appointment of an Advocate Commissioner. The Advocate Commissioner is sought to be appointed only to note down the physical features of the property existing as on today. The report of the Advocate Commissioner would help the Court to come to a conclusion in a suit of this nature. The report of the Advocate Commissioner cannot be construed as a finding of facts or collection of evidence. The parties are entitled to lead their evidence independently of the report of the Advocate Commissioner.

In the circumstances, the order dated 30-10-2015 in I.A.No.243 of 2015 in O.S.No.1638 of 2015 is set aside and I.A.No.243 of 2015 is allowed and the matter is remanded to the learned VII Junior Civil Judge, City Civil Court, Hyderabad for appointing an Advocate Commissioner for noting down the physical features of the property existing as on today. The plaintiff and the defendants are entitled to file their work memos with the Advocate Commissioner and if they are aggrieved, they can file their objections also after submission of the report by the Advocate Commissioner.

The Civil Revision Petition is accordingly allowed. No costs.
As a sequel thereto, miscellaneous petitions, if any, pending shall
stand closed.

A. RAMALINGESWARA RAO, J

Date: 31-12-2015

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