

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 3763 of 2015

DATED 18th November, 2015

BETWEEN

Atmuri Vara Lakshmi

...Petitioner

And

Tata Leela Sudhamini Devi

...Respondent

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 3763 of 2015

ORDER:

The plaintiff in O.S.No.488 of 2006 on the file of the learned I Additional Junior Civil Judge, Machilipatnam is the petitioner herein. She filed I.A.No.382 of 2015 in the said suit for appointment of an Advocate Commissioner to note down the physical features and file a plan including any unauthorized construction in the plaint schedule property by taking assistance of the Mandal Surveyor. The said application was dismissed by the Court below by order dated 25.08.2015, challenging which the present Civil Revision Petition is filed.

The case of the petitioner/plaintiff is that her father purchased an extent of 341.97 square yards of house site in her favour and an extent of 68.63 square yards was occupied by the respondent/defendant and a RCC building was constructed therein. The case of the respondent/defendant is that the father of the petitioner/plaintiff was present at the time of purchase of the disputed property, taking measurements and at the time of house warming ceremony performed after completion of the construction. The respondent/defendant who was examined as DW.1 stated in his cross examination that an Advocate Commissioner may be appointed for measuring the land if there is any dispute. It was further stated that since the plaintiff lost a portion of the land in the road widening, the present suit was filed. The suit is filed for declaration of title and recovery of possession of the disputed property admeasuring 68.83 square yards. The learned I Additional Junior Civil Judge dismissed the said application with the following observations:

“The main suit is filed for the year 2006, it is posted for declaration. When the matter is posted for arguments the present application is filed to appoint an advocate commissioner to note down physical features of plaint schedule property without assigning any reason to allow this application. More over the Honourable 10th Additional District Judge directed to dispose of the matter within a 6 months. The petitioner without taking any steps since 2006, at present he filed this application without any bonafide ground. Therefore the petitioner is liable to be dismissed.”

It is no doubt true that the suit is of the year 2006 and the impugned interlocutory application was filed at the fag end of the suit i.e. after completion of evidence and when the matter is posted for arguments. The petitioner/plaintiff who is alleging encroachment of her site should not be prevented from obtaining a report of the Advocate Commissioner. The cross examination of DW1 was completed in August, 2015. In the circumstances, if the suit is delayed by another three months, nothing happens. But the trial Court appears to have acted in view of the learned 10th Additional District Judge's direction to dispose of the matter within six months. In order to do

justice to the parties, this Court is inclined to allow the Civil Revision Petition by setting aside the order dated 25.8.2015 passed by the learned I Additional Junior Civil Judge, Machilipatnam.

Accordingly the order under revision is set aside and the learned I Additional Junior Civil Judge, Machilipatnam is directed to appoint an Advocate Commissioner and call for a report with regard to the physical features of the suit schedule property based on the documents produced by the plaintiff and defendant, within one month from the date of receipt of a copy of this order. It is made clear that the suit itself shall be disposed of within two months thereafter.

The Civil Revision Petition is allowed. 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 17th November, 2015..

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