

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO. 4850 OF 2010

ORDER:

This Revision is filed challenging the order dated 04.08.2010 in I.A.No. 839 of 2009 in O.S.No. 457 of 2007 of the I Additional Junior Civil Judge, Machilipatnam.

Petitioner herein is the plaintiff in the suit. Pending Revision he died. His legal representatives have been brought on record.

He filed a suit against the respondent for declaration of his title to the plaint schedule property and for perpetual injunction restraining the respondent from interfering with his peaceful possession and enjoyment of the property and for costs.

Pending suit, the petitioner had filed I.A.No. 839 of 2009 under Order 26 Rule 9 CPC to appoint an Advocate Commissioner to measure his property with reference to his title deed and also to measure the property of the defendant with reference to the title deed with the assistance of the Municipal Surveyor.

This petition was dismissed by the Court below on 4.8.2010 on the ground that if it is allowed, it would amount to gathering of evidence having regard to the nature of the dispute in the suit.

From the pleadings of both parties in the suit, it appears that the suit schedule property is required to be localized. The petitioner, therefore ought to have sought for the appointment of an Advocate Commissioner to localize the suit schedule property with the help of a competent surveyor basing on the title deeds of both the parties. But he sought appointment of an Advocate Commissioner to measure the properties of himself and the defendant. The relief claimed in I.A.No. 839 of 2009 would not in any way help to resolve the controversy in the suit. Therefore, I do not see any reason to interfere with the order dated 4.8.2010 in I.A.No. 839 of 2009 in O.S.No. 457 of 2007.

Accordingly, the Civil Revision Petition is dismissed. However, it is open to the petitioner to file an application before the Court below to appoint an Advocate Commissioner to localize the suit schedule property with the help of a competent surveyor basing on the title deeds of both the parties and if such application is filed, the Court below shall consider it in accordance with law. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, pending if any, shall stand dismissed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04.06.2015

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