

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

CIVIL REVISION PETITION No. 3836 of 2014

ORDER:

This Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure against the order dated 16.09.2014 passed by the VIII Additional District and Sessions Judge, Vijayawada, in I.A.No.394 of 2007 in A.S.No.216 of 2005.

The respondent/plaintiff filed O.S.No.219 of 2001 on the file of III Additional Senior Civil Judge, Vijayawada, against the petitioners/defendants, for declaration that he is the absolute owner of the plaint schedule property and to direct the petitioners/defendants to deliver the possession thereof to him and for damages for unauthorized use and occupation. The respondent/plaintiff claims a bit of house site of the suit schedule property through patta No.346, whereas petitioners 1 and 2 claim that they succeeded to the property through patta No.345, and petitioner No.3 claims through patta No.344. The said suit was dismissed after trial through judgment and decree dated 07.11.2005.

Aggrieved by the same, the respondent filed A.S.No.216 of 2005 on the file of VIII Additional District and Sessions Judge, Vijayawada. In the said appeal, the respondent filed I.A.No.394 of 2007 under Order XXVI Rule 9 C.P.C seeking appointment of Advocate Commissioner for the purpose of recording physical status

of the suit schedule land by measuring the same with the assistance of the Town Surveyor, Vijayawada and to file a report. The lower appellate Court allowed the said I.A through the impugned order. Aggrieved by the same, the petitioners filed this Civil Revision Petition.

Heard both sides.

In this case, it is clear from the pleadings on record that the dispute is not with regard to the Survey Number or the Town Survey Number. The dispute is with regard to boundaries of the land in respect of which pattas were granted to different applicants. Hence, it is a matter for evidence by the respondent/appellant, which cannot be resolved by appointment of an Advocate Commissioner. Under Order XXVI Rule 9 C.P.C, an Advocate Commissioner can be appointed to note down the physical features of the property only in the event of dispute with regard to its boundaries with the Town Survey, but not the boundaries fixed within the land allotted to various applicants.

For the aforesaid reasons, the order under revision is set aside.

The Civil Revision Petition is accordingly allowed. However, it is made clear that if the respondent wants to adduce any other evidence in support of his case, it is open for him to move appropriate application. There shall be no order as to costs.

Consequently, pending miscellaneous applications,

if any, shall also stand dismissed.

R.SUBHASH REDDY, J

Date: 06.03.2015

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