

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 4700 of 2014

ORDER:

The petitioners herein are plaintiffs in O.S.No.1042 of 2009 on the file of the Principal Junior Civil Judge at Kakinada. The suit was filed for declaration of title and for permanent injunction. In the said suit, the petitioners filed I.A.No.3760 of 2009 for appointment of an Advocate Commissioner and a Commissioner was appointed on 21.01.2010. He partly executed the warrant and returned the same. In those circumstances, the trial Court appointed another Commissioner by order dated 23.04.2014 in I.A.No.3 of 2013 in I.A.No.3760 of 2009 and he filed a memo on 10.10.2014 stating that he could not execute the warrant, as the surveyor was not available. Accordingly, he returned the warrant along with the required documents. On that, the petition in I.A.No.3 of 2013 was closed on 10.10.2014. Challenging the same, the present civil revision petition is filed.

2. Though the respondent was served on 14.09.2015, none appeared on her behalf, and hence, this Court has taken this matter for final consideration.

3. The memo filed by the 2nd Commissioner on 10.10.2014 reads as follows:

"It is submitted that I visited the schedule property only once and I prepared my spot notes at that time. The surveyor did not come and I could measure properties. The petitioners could not secure the presence of the surveyor due to one reason or the other. I could not execute the commission warrant as the surveyor was not available. I am herewith returning the commission warrant along with below listed documents as per the order of this Hon'ble Court. Hence this memo."

The Commissioner could not execute the warrant due to non-availability of surveyor. In those circumstances, the trial Court should have passed appropriate orders in the matter to secure the presence of the surveyor to get the warrant executed. In fact, the trial Court should have appointed a second Commissioner in I.A.No.3760 of 2009

itself without there being need for another application from the petitioners for appointment of another Commissioner. The suit is of the year 2009 and the suit is held up in this process for the last six years. In the circumstances, I.A.No.3 of 2013 is reopened and remanded to the trial Court for passing appropriate orders, in accordance with law, for appointment of Advocate Commissioner within a period of sixty (60) days from the date of receipt of a copy of the order.

The Civil Revision petition is accordingly allowed. Consequently, miscellaneous petitions, if any, pending in the civil revision petition shall stand dismissed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

12th November, 2015

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