

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO
Civil Revision Petition Nos.3343, 3467 and 3741 of 2015
Date: 10-12-2015

Between:

Pagadala Ramachandraiah

.... Petitioner

AND

P. Padmanabham

.... Respondent

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO
Civil Revision Petition Nos.3343, 3467 and 3741 of 2015

ORDER:

These Civil Revision Petitions are being disposed of by this common order as they arise out of interlocutory applications filed for appointment of Advocate Commissioner and the plaintiff is common in the suits.

The respondent-plaintiff in these revision petitions filed O.S.No.545 of 2010 seeking permanent injunction against the defendant therein and O.S.Nos.659 of 2010 and 661 of 2010 against the defendants therein seeking declaration of title and mandatory injunction. In the said suits, the defendants filed their written statement. After filing the written statements, before commencement of trial, the defendants filed I.A.No.220 of 2015 in O.S.No.545 of 2010, I.A.No.218 of 2015 in O.S.No.661 of 2010 and I.A.No.219 of 2015 in O.S.No.659 of 2010 respectively for appointment of an Advocate Commissioner. Those applications were dismissed by separate orders dated 30-06-2015, challenging

which these Civil Revision Petitions are filed.

In spite of service of notice on the respondents herein, none appeared before this Court.

Learned counsel for the petitioners submits that it is a common case of all the defendants that the plaintiff is laying a false claim over plaint A-schedule property, which has nothing to do with the documents filed by him. In respect of B-schedule property, the constructions were made by third parties, but not by the plaintiff. The petitioners claimed to have purchased B-schedule property from the original owners. In those circumstances, they filed the applications for appointment of Advocate Commissioner to locate and identify the plaint schedule property with particular reference to the boundaries, measurements and other existing physical features thereon and to file his report. A counter was filed in respective cases stating that such applications cannot be filed for gathering evidence. The trial Court dismissed the applications on the ground that when a suit was filed with definite boundaries, the appointment of Advocate Commissioner to note down the boundaries, measurement and physical features of the suit property does not arise. Further, he cannot be appointed to identify the suit schedule property without the assistance of Mandal Surveyor. Since the petitioners did not ask for a prayer to appoint an Advocate Commissioner to identify the suit schedule property and to measure the same with the assistance of Mandal Surveyor, the trial Court dismissed the said applications.

No doubt, no application for appointment of Advocate Commissioner can be sought for gathering evidence. Even when the petitioners did not ask for measurement of the suit schedule

property with the help of mandal surveyor, the Court is empowered to appoint an Advocate Commissioner to note down the physical features with the assistance of mandal surveyor. Though the prayer in the applications was not properly drafted and gives an impression of trying to gather evidence, the Commissioner can be appointed for the purpose of noting down the physical features of the suit schedule land with the help of the mandal surveyor.

In the circumstances, the Civil Revision Petitions are allowed setting aside the orders dated 30-06-2015 in I.A.No.220 of 2015 in O.S.No.545 of 2010, I.A.No.218 of 2015 in O.S.No.661 of 2010 and I.A.No.218 in O.S.No.659 of 2010 and the said I.A.s are remanded to the learned Principal Junior Civil Judge, Tirupathi for appointment of an Advocate Commissioner to note down the physical features of the suit schedule property with the help of mandal surveyor on the basis of the work memo issued by the defendant. It is made clear that the parties are at liberty to file their objections to the report of the Commissioner, if they are aggrieved. There shall be no order as to costs.

A. RAMALINGESWARA RAO, J

Date: 10-12-2015

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