

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

-
C.R.P. No.2120 of 2012

and

C.R.P. No.5313 of 2013

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COMMON ORDER:

These two Civil Revision Petitions are being disposed of by this common order as they arise out of the same suit.

The defendant in O.S. No.1138/2011 on the file of the Court of the learned III Additional Junior Civil Judge, Visakhapatnam, is the petitioner in both these Civil Revision Petitions. C.R.P.No.2120/2012 arises out of an order in I.A.No.1276/2011, whereas C.R.P. No.5313/2013 arises out of an order in I.A.No.1351/2011. I.A. No.1276/2011 is filed for appointment of an Advocate Commissioner to note down the physical features and to take down the measurements with the help of VUDA master plan from road in Survey No.8 to eastern boundary of A to eastern boundary in B schedule. I.A.No.1351/2011 is filed, under Order VII Rule 11 C.P.C., to reject the suit. I.A. No.1276/2011 was allowed, whereas I.A.No.1351/2011 was dismissed vide separate orders dated 27.01.2012.

C.R.P. No.2120/2012:

So far as the subject matter in C.R.P. No.2120/2012 is concerned, since it is an application for appointment of Advocate Commissioner to note down the physical features, there cannot be any objection for the defendant to oppose the same. But, the learned counsel for petitioner submitted that the lower Court passed an order allowing the Advocate Commissioner to go beyond the scope of the suit itself.

In the circumstances, after hearing the learned counsel for both the parties, this Court feels it just and necessary to make some

arrangement with regard to the submission of report by the Advocate Commissioner. While upholding the order in I.A.No.1276/2011, dated 27.01.2012, appointing the Advocate Commissioner to note down the physical features and take down the measurements, the same shall be confined to the sketch, filed along with the plaint. Both the parties shall file their work memos with regard to Advocate Commissioner, and the Advocate Commissioner shall confine his report as per the work memos and take down the physical features of the property mentioned in the suit schedule.

With the above observations, the order in I.A.No.1276/2011 dated 27.01.2012 is modified, and the C.R.P.No.2120/2012 is accordingly closed. No order as to costs.

C.R.P. No.5313/2013:

So far as the subject matter of C.R.P. No.5313/2013 is concerned, the learned counsel for petitioner submitted that the suit is not maintainable for not complying with Section 68 of the A.P. Housing Board Act and the application filed by the petitioner, under Order VII Rule 11 C.P.C., is dismissed at the threshold without going into the facts of the case thoroughly.

In the circumstances, without going into the merits of the case, C.R.P. No.5313/2013 is disposed of, by directing the trial Court to frame an appropriate issue with regard to maintainability of the suit, along with all other issues, and decide the suit without being influenced by the earlier order passed by the trial Court as well as the observations made in this order. No order as to costs.

Miscellaneous Petitions, if any, pending in these Civil Revision Petitions shall stand closed.

A.RAMALINGESWARA RAO, J

21.12.2015
MVA