

HON'BLE SRI JUSTICE P.NAVEEN RAO
CIVIL REVISION PETITION No.574 of 2015

Date: 20.03.2015

Between:

K.Rahamath Saheb s/o. K.Yousuf Saheb,
Aged about 53 years, Occu: Cultivation,
R/o.Rayadurg, Ananthapur District, A.P.,

.. Petitioner

AND

Madhusudhan Verma s/o. late A.Narayana Raju,
Aged about Major, Hindu, Occu:Employee,
r/o.D.No.13-2-169, Ballary Road, Rayadurg,
Anantapur District, A.P.,

.. Respondent

The Court made the following:

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ORDER:

Revision petitioner is the plaintiff in the suit O.S.No.184 of 2007 on the file of Junior Civil Judge, Kalyandurg. He filed I.A.No.457 of 2011 praying to appoint Advocate Commissioner in respect of the suit schedule property and note down the topographical and physical features of the suit schedule property and to take measurements of the site.

2. On detailed consideration of the rival contentions, the trial Court passed orders on 20.11.2014 dismissing the said interlocutory application.

3. Learned counsel for the revision petitioner contends that the trial Court erred in dismissing the interlocutory application. In a given case an application for appointment of Advocate Commissioner can be made at any time during the pendency of the suit and, therefore, the trial Court erred in holding that the application was not filed immediately. The trial Court also erred in holding that since the suit is filed for declaration of title and permanent injunction, burden vests in the plaintiff to establish his right, possession and enjoyment of the suit schedule property and since the dispute is regarding the boundaries and the defendant was trying to undertake construction on the property belonging to the plaintiff, interlocutory application was validly filed. It is further contended that I.A., was not filed for collection of additional evidence as observed by the trial Court. He further contends that in the interest of justice and proper adjudication of claim in the suit, the trial Court ought to have appointed the Advocate Commissioner by allowing the I.A., to note down the physical features of the suit schedule property and to take measurements of the site and it does not prejudice the defendant.

4. Learned counsel for the respondent submits that the trial Court has passed detailed order after considering all the contentions and there is no error in the order of the lower Court, much less patent error warranting interference by this Court in the petition filed under Article 227 of the Constitution of India. The conduct of the petitioner was also very relevant. Petitioner is protracting the litigation and not allowing the early disposal of the suit and in fact, only after the evidence was closed and the case was coming up for arguments, petitioner filed the said I.A.

5. Suit is filed for declaration of title. The description of the property is mentioned in the schedule appended to the suit. Whether the petitioner is entitled to the declaration sought is required to be adjudicated in the suit. As seen from the record, after closing of evidence, the case was coming up for arguments on 23.2.2011. At that stage petitioner filed I.A.No.149 of 2011 to recall P.W.1, which prayer was granted. When the matter was coming up for further chief examination of P.W.1, petitioner filed I.A.No.457 of 2011. The evidence was closed on 07.02.2013. Even after closure of the evidence, I.A.No.457 of 2011 underwent several adjournments and in fact, on 04.07.2014, it was dismissed for non-prosecution. It was restored at the instance of the petitioner. After elaborately considering the contentions on either side, Court below passed orders rejecting the

claim of the petitioner and dismissed the I.A. As noticed above the conduct of the party disentitles him to relief from this Court. I see no error in the decision of the Junior Civil Judge, Kalyandurg, warranting interference by this Court.

6. Accordingly the civil revision petition is dismissed. There shall be no order as to costs. Miscellaneous petitions if any pending in this petition shall stand closed.

Date : 20.03.2015
kkm

JUSTICE P.NAVEEN RAO

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