

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.3351 of 2015

ORDER:

The 3rd defendant in O.S.No.714 of 2001 on the file of Principal Junior Civil Judge, Anantapur is the petitioner herein. The said suit was filed by the 1st respondent herein/plaintiff for specific performance of Agreement of Sale, dated 15.09.1979. The petitioner filed I.A.No.599 of 2015 seeking appointment of Advocate Commissioner to measure the suit schedule property, note down existence of sheds, bore wells, electricity connection, gate pillars, iron gates and stock of note books kept in the sheds with the help of Mandal Surveyor. The said application was dismissed by an order, dated 13.07.2015. Challenging the same, the present revision petition is filed.

2. The petitioner herein claims to be a subsequent purchaser from the original owner. Initially she was set *ex parte*, but by virtue of subsequent orders, she has been contesting the aforesaid suit. She filed the present application stating that during the cross-examination of P.W.1, he sated about the existence of above structures, but denied his exclusive possession and enjoyment over it. He also expressed lack of knowledge with regard to establishment of Note Book manufacturing unit in the suit property in an extent of Ac.0-40 cents under the name and style of Varnamala Enterprises and storing note books in the said premises. In those circumstances, appointment of Advocate Commissioner would help the case of the petitioner.

3. The 1st respondent/plaintiff filed counter affidavit stating that after closure of the evidence of P.W.3, the suit was posted for defendants' side evidence. Thereafter, the petitioner filed a petition to reopen and recall P.W.3 and at that stage, she filed the present application for appointment of Advocate Commissioner for collection of evidence. He also stated that this Court in C.R.P.No.2635 of 2014 permitted the

petitioner herein to defend the suit by cross-examining the witnesses to be examined by the plaintiff or other defendants. The petitioner did not execute any agreement of sale in favour of the plaintiff.

4. In the said circumstances, the lower Court dismissed the application observing that appointment of Advocate Commissioner would not serve any purpose and his report has no bearing over the result of the suit. The lower Court also observed that even if the Advocate Commissioner is appointed, he would measure the suit schedule property and note down the physical features and submit his report. But, the suit is filed for the relief of Specific Performance of Agreement of sale and those facts have nothing to do with the relief as sought for in the suit. In view of the observations made by the trial Court in its order, dated 30.07.2015, with which I concur, the Civil Revision Petition is liable to be dismissed.

5. Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

A. RAMALINGESWARA RAO, J

DECEMBER 22, 2015

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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Date: 22.12.2015

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