

HON'BLE SRI JUSTICE R.KANTHA RAO
C.R.P.No.4085 OF 2015

ORDER

This Civil Revision Petition is directed against the order dated 26.06.2015 passed in I.A.No.474 of 2015 in A.S.No.58 of 2013 by the IV Additional District Judge, Kakinada.

The plaintiff instituted the suit for declaration of title and recovery of possession in respect of DEFH mentioned in the plaint plan to an extent of Ac.1.54 cents in S.No.261/1.

The first defendant is claiming property by virtue of sale deed dated 9.10.2002. The Trial Court after examining the witnesses and evidence on record, decreed the suit.

The grievance of the petitioner is that under the garb of decree, the plaintiffs are trying to obtain possession of the property of the first defendant illegally. It is his version that he purchased the property under a registered sale deed and the plaintiffs have nothing to do with the same. In appeal, he filed an application for appointment of an advocate commissioner to note down the physical features of the schedule property, to measure plot Nos. 2 to 5 and also plot Nos.15 to 12

by taking into consideration plaint plan and private plan attached to the petition. The said petition was dismissed by the appellate Court on the ground that the petitioner desired for the purpose of gathering evidence and that the petitioner ought to have filed petition for appointment of an advocate-commissioner in the trial Court itself. Challenging the said order, the present revision is filed.

The documents under which the parties to the suit are claiming title have not been in dispute. The only question requires to be considered in this revision is as to whether the appellant-defendant encroached any part of the property mentioned in the plaint plan which belongs to the plaintiffs.

It is the contention of the petitioner-first defendant that under the garb of the decree passed by the trial Court, the plaintiffs were claiming property which he purchased under registered sale deed. Thus, there exists a dispute relating to the identity of the property in question.

This Court is of the view that as the identity of property in question is in dispute, the petitioner filed a petition to appoint an advocate commissioner for identification of the property. There is no bar in law to file an application for appointment of an advocate Commissioner in the

appeal.

Therefore, the order passed by the appellate Court is set aside. I.A.No.474 of 2015 in A.S.No.58 of 2013 is allowed. The trial Court is directed to appoint an advocate Commissioner to note down the physical features of the property and localize the respective extents by measuring plot Nos. 2 to 5 and 15 to 12 with reference to the sale deeds and plaint plan and not the private plan submitted by the petitioner.

Accordingly, the Civil Revision petition is allowed. No costs.

Miscellaneous petitions, if any pending in this revision shall stand closed.

JUSTICE R.KANTHA RAO

23rd November, 2015

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