

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.906 of 2016

ORDER :

The revision petitioners are the defendants 1 to 3 in the suit filed by four plaintiffs/revision respondents in O.S. No.336 of 2015 showing plaint-A schedule properties belongs to them and B-schedule is the C.C. road which is the right of passage claiming as obstructing by the defendants. Pending the suit, I.A. No.1166 of 2015 was filed by the defendants seeking to appoint advocate-commissioner with survey assistance to note down the physical features. The lower Court after contest vide impugned order dated 20.01.2016 allowed the petition only to the extent of appointment of an advocate-commissioner to note down the physical features with no survey assistance.

2) It is from facts of the case on hand shows practically to note down the physical features, it requires localization with survey assistance for the following reasons: The contest of the plaintiff is that they got right of easement for the plaint-B schedule and the contest of the defendants is that the plaintiff having right of way from the B-schedule and there is a C.C road that stops beyond land of the plaintiff and further North of C.C Road, the plaintiff got own land and there is no road in the land of plaintiff and at no point of time there is a suit claimed way; apart from

the plaintiff got alternative way to the east of their lands that were recently closed by raising a crop. Thus, in the factual scenario, it is also required with reference to the revenue record not only as to the suit plaint-B schedule is in use as way or not by note down the physical features and if so in which survey number it falls and whether at any point of time any of the lands belong to any common owner as ancestor or predecessor in title to the parties to the lis; also with reference to the revenue record and F.M.B particularly as to the abutting lands to the disputed plaint-B schedule passage and within which survey numbers and whether any that of the plaintiffs and defendant; also as to the existence of alternative way and whether it is earmarked from any revenue record or otherwise and as to any physical features, if at all in use thereby for not only noting physical features but also identifying the properties as to in which survey numbers that is and to do so, it requires the assistance of surveyor to the advocate-commissioner with a direction to measure and demarcate the disputed B-schedule and identify the plaint-A schedule and the land of the defendants with reference to the F.M.B and other revenue record.

3) Accordingly, the revision petition is allowed. Needless to say both parties are entitled to give work memos to answer only within the scope of the commission purpose indicated above. Needless to say, as it is a dispute touching the passage claiming through easement

and with limited scope; the trial Court shall make every endeavor for early disposal of the suit. There shall be no order as to costs.

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

Dr. B. SIVA SANKARA RAO, J

19.08.2016
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