

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. Nos.4318 and 4353 of 2016

COMMON ORDER:

These two Revisions arise out of the same suit as between the same parties. Therefore, they are being disposed of by this common order.

2. Petitioner in these two Revisions is the plaintiff in O.S.No.335 of 2006. He filed the suit for declaration of his title and for recovery of possession of 'ABCD' plaint plan property after ejecting the respondent.

3. After trial concluded and petitioner as well as respondent submitted arguments, and when matter was coming up for reply arguments, the petitioner filed I.A.No.258 of 2016 under Order XXVI Rule 9 C.P.C. to appoint an Advocate-Commissioner for the purpose of ascertaining the correct measurements of the plaint plan property and the properties of respondent with reference to their respective sale deeds with the assistance of Mandal Surveyor by superseding the earlier report of an Advocate-Commissioner in I.A.No.794 of 2012, and I.A.No.257 of 2016 to reopen the matter for entertaining the application under Order XXVI Rule 9 C.P.C.

4. These two applications were opposed by the respondent.

5. The Court below rejected them on the ground that in I.A.No.794 of 2012 Advocate-Commissioner was already appointed

and had submitted a report; there was an application I.A.No.484 of 2013 filed by petitioner to redirect the same Commissioner, which was dismissed on 13-06-2014; but this was not challenged by way of Revision; that the suit has already been part heard and at that stage, 10 years of the filing of suit, I.A.No.258 of 2016 could not have been filed.

6. It rejected I.A.No.257 of 2016 on the ground that I.A.No.258 of 2016 has been dismissed and the reasons are given in I.A.No.258 of 2016.

7. Challenging the same, these Revisions are filed.

8. Though learned counsel for petitioner sought to contend that refusal of the Court below to appoint Advocate-Commissioner causes grave prejudice to petitioner and that in the survey conducted by the earlier Advocate-Commissioner, certain important aspects were not taken into account, the fact remains that I.A.No.484 of 2013 was filed by petitioner for re-entrustment of warrant to the same Advocate-Commissioner, but it was dismissed. The said order has not been questioned by petitioner. 10 years after filing of the suit and when the suit is at the stage of submitting reply arguments, applications of this nature cannot be entertained and the Court below was, therefore, right in rejecting them.

9. I therefore do not find any merit in the Revisions and they are accordingly dismissed. No costs.

10. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-12-2016
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