

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

CIVIL REVISION PETITION No. 2058 of 2016

ORDER:

This revision arises out of dismissal of an application taken out by the plaintiff before the trial Court for reopening the case for the purpose of re-directing the Advocate Commissioner to note down the physical features of the suit schedule property.

2. Heard Mr. M. Ravindra, learned counsel for the petitioner/plaintiff.

3. The petitioner herein filed a suit in O.S.No.18 of 2010 on the file of the Principal Junior Civil Judge, Nandigama, praying for a declaration that he is the absolute owner of the suit schedule passage and for a consequential relief of mandatory injunction to direct the defendant to remove the wall that was constructed at point "C" as shown in the plaint plan.

4. In the suit, an Advocate Commissioner was appointed at the instance of the petitioner/plaintiff in I.A.No.364 of 2010. He filed a report after inspecting the property and noting down the physical features.

5. For some reason, which I am unable to decipher, the Commissioner was examined not on the side of the petitioner/plaintiff, but examined on the side of the respondent/defendant.

6. After the evidence of both sides was over, including the evidence of the Advocate Commissioner, the petitioner/plaintiff took out an application for reopening the case and for re-directing the Advocate Commissioner to measure the distance of the water tank from the north-east corner in the site of the respondent/defendant. This application was rejected by the Court below forcing the plaintiff to come up with the above revision.

7. The order of the Court below, in my considered view, does not suffer from any infirmity. There are three reasons. They are:

(a) The Commissioner was appointed by an order dated 08.11.2011 passed in I.A.No.364 of 2010. He executed the warrant on 11.02.2012 in the presence of the counsel on both sides. Thereafter, he filed a report along with the plan on 07.03.2012. From

07.03.2012 until the application for reopening was filed, the petitioner/plaintiff did not move his little finger. He did not even object to the findings recorded in the Commissioner's report.

(b) The petitioner/plaintiff did not also choose to examine the Commissioner, but the Commissioner was examined on the side of the defendant.

(c) It was only after cross-examination of the Advocate Commissioner by the petitioner/plaintiff on 30.07.2015 that the petitioner chose to file the present application for reopening.

8. Therefore, for all the above three reasons, the Court below was justified in dismissing the application for reopening. In view of the above, I find no merits in the Civil Revision Petition and, hence, it is dismissed.

Consequently, miscellaneous petitions if any pending in the revision shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

17th June, 2016
cbs

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

CIVIL REVISION PETITION No. 2058 of 2016

17th June, 2016

cbs