

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 469 of 2016

ORDER:

The present Civil Revision Petition is filed under Article 227 of the Constitution of India, aggrieved by the order dated 27.11.2015 passed in I.A.No.683 of 2014 in O.S.No.552 of 2011 on the file of the Additional Senior Civil Judge, Tirupathy, wherein an application filed Under Order 26 Rule 9 and Section 151 of C.P.C. seeking for appointment of advocate-commissioner to locate the plaint schedule property with measurements with the help of Mandal Surveyor came to be rejected.

The facts in issue are as under:

The first respondent/plaintiff filed O.S.No.552 of 2011 seeking permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment over the plaint schedule property. Pending the said suit, the defendants filed I.A.NO.683 of 2014 seeking appointment of an advocate Commissioner to locate and measure the extent fixing the boundaries for Ac.0.08 cents in Sy.No.301/6A and also old S.No.308/4, with the help of the Mandal Surveyor. A counter came to be filed opposing the same. After considering the rival arguments, the trial Court dismissed

the application on the ground that appointment of an Advocate-Commissioner to locate the plaint schedule property with the help of Mandal Surveyor would lead to collection of evidence. Aggrieved by the same, the present Civil Revision Petition is filed.

Learned counsel for the petitioner mainly submits that in the interest of both the parties, locating the plaint schedule property and fixing the boundaries would be essential for proper adjudication of the dispute. He submits that merely because the appointment of an Advocate-Commissioner was sought to locate the plaint schedule property will not by itself amount to collection of evidence. It is his case that the same would avoid production of voluminous evidence. The same is disputed by the learned counsel for the first respondent.

A perusal of the material on record would show that there is some dispute with regard to exact location of the plaint schedule property. Definitely appointment of an advocate-commissioner for the said purpose may not amount to gathering of evidence. A reading of the order under challenge would indicate that the learned trial Judge proceeded on the footing that the application for appointment of advocate-commissioner was filed by the plaintiff appears to be incorrect. In order to avoid voluminous evidence to prove/disprove the claim, in my view it would be just and proper to appoint an advocate-

commissioner to locate the plaint schedule property with measurements with the help of Mandal Surveyor.

Accordingly, the C.R.P. is allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

04.07.2016

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