

THE HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.3210 of 2016

ORDER:

Plaintiff in O.S.No.1104 of 2008 is the revision petitioner. Respondents filed I.A.No.108 of 2016 for appointment of Advocate Commissioner to inspect the suit schedule locality with the assistance of the District Surveyor, Survey and Land Records, Kurnool to conduct of the plaint schedule site and also the adjacent Railway site and submit report.

2. The trial Court, through the impugned order dated 19.04.2016, has recorded that at one stage of the matter, the revision petitioner himself sought for appointment of Advocate Commissioner and for reasons not borne out by the record, the same could not be executed. The respondents having realized the objection raised by the revision petitioner viz. that the revision petitioner is not accepting the joint survey said to have been conducted and marked as Ex.R3, with a view to give quietus to the identity of the property, the instant application was ordered.

3. Learned counsel appearing for the revision petitioner, firstly, contends that the application now filed is only to fill up gaps in the evidence by respondents herein and secondly, once Ex.R3 is available on record, there is no need for appointment of Advocate Commissioner to carry out the survey through the District Surveyor. Learned counsel relies upon a decision reported in **NEERUDU SRINIVAS REDDY v. NEERUDU SUNANDA**^[1]

4. Smt. N. Sasikala, appearing for respondents, contends that the objection now raised by the revision petitioner cannot and could not be considered by this Court, for the revision petitioner, firstly, objects to the legality or binding effect of joint survey conducted and marked as Ex.R3 and

secondly, the property is, admittedly, claimed as property belonging to railways. The intention of respondents is only to identify the plaint schedule property with the assistance of the District Surveyor and file report into the Court. The discretion exercised by the trial Court does not warrant interference having regard to the peculiar facts and circumstance of the case and prays for dismissal of the revision.

5. Heard, perused the material available on record and taken note of the contentions.

6. At the outset, it has to be noted that the trial Court, through the order impugned, has exercised discretion to appoint Advocate Commissioner. Objection of the revision petitioner is that Ex.R3, is available on record and the instant application is unnecessary or unwarranted. I have carefully considered the findings recorded by the trial Court. From the reasons recorded by the trial Court, it is apparent that the revision petitioner herein is objecting to the legality or otherwise of Ex.R3. With a view to avoid further argument or deliberation on this aspect of the matter, the trial Court exercised its discretion and jurisdiction in allowing the application. I do not find any illegality or irregularity in the impugned order. The decision relied upon by the learned counsel for petitioner cannot and could not be, in terms, applied to the case on hand.

The civil revision petition is dismissed. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

S. V. BHATT, J

July 11, 2016
DSK

