

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.No.657 of 2016

ORDER

This Civil Revision Petition is directed against the order dated 05.01.2016 passed in I.A.No.1723 of 2013 in O.S.No.88 of 2012 by the Principal Junior Civil Judge, Chirala.

The defendant in O.S.No.88 of 2012 is the revision petitioner herein. The respondent-plaintiff filed I.A.No.1723 of 2013 seeking appointment of an Advocate Commissioner to take measurements of the suit schedule property as per the documents of the plaintiff and the defendant and also as per the revenue records and to file report. The said application was resisted by the defendant by filing a counter. However, the learned Principal Junior Civil Judge, by his order dated 5.1.2016 allowed the application. Challenging the same, the present revision was filed.

The affidavit filed in support of the petition by the respondent-plaintiff seeking appointment of the Advocate Commissioner states that he filed suit for declaration of title in respect of Ac.0-72 cents of land and the revision petitioner herein, who is the defendant, is also claiming Ac.0-72 cents of land in Sy.No.519/5 of Patha Chirala, whereas the ancestors

of the defendant got only Ac.0-24 cents in Sy.No.519/5, but not Ac.0-72 cents.

Resisting the said petition, the revision petitioner-defendant filed counter, wherein it is stated that there was previous litigation between him and the plaintiff in O.S.No.150 of 1996 in which the revision petitioner-defendant got appointed an Advocate Commissioner to note the physical features and the Advocate Commissioner filed his report also. The defendant in the present suit filed a copy of the Commissioner's report also. It was also alleged that the plaintiff intentionally got registered rectification sale deed in order to suit his convenience.

These allegations and counter allegations have to be decided in the main suit on the basis of the oral and documentary evidence. But the Court below allowed the application with the following observations.

“If Advocate Commissioner appointed, for noting down the existing physical features and get measurements of schedule property it will be helpful to determine the actual dispute in between the parties. No prejudice will be caused to respondent for mere appointing advocate commissioner. Hence, in these circumstances, I inclined to appoint Sri KSSP Advocate, Chirala for the purpose of noting down the existing physical features of schedule property and also to take measurements of the same as per the documents of petitioner and defendant plus revenue records if any with the assistance of Mandal Surveyor concerned and to file detailed report a sum of

Rs.2,500/- fixed towards fee of advocate Commissioner and the same is directed to be paid to commissioner to the execution of warrant. Office is directed to prepare warrant and entrust the same to the Commissioner for payment of process. For advocate commissioner report, call on 19.2.2016.”

The Advocate commissioner cannot be appointed for the purpose of measuring the properties on the basis of the documents produced by the petitioner and the respondent along with revenue records with the assistance of Mandal Surveyor. The burden is on the plaintiff to establish his case, but he cannot rely on the report of the Advocate Commissioner based on the report to be submitted by him.

Under these circumstances, the impugned order is liable to be set aside.

Accordingly, the order dated 5.1.2016 passed in I.A.No.1723 of 2013 in O.S.No.88 of 2012 by the Principal Junior Civil Judge, Chriala, is set aside and the Civil Revision Petition is allowed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

3rd June, 2016

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