

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 4539 of 2015

ORDER:

The petitioner herein is the plaintiff in O.S.No.5 of 2011 on the file of Senior Civil Judge, Nagarkurnool. The said suit was filed for recovery of possession of an extent of 50 sq. yards in Survey No.153 situated at Waridhyala Village, Kollapur Mandal, Mahabubnagar District.

The main case of the petitioner is that the land held by the petitioner as well as the respondents was originally owned by the ancestors of the petitioner and they sold Ac.3.06 guntas in Survey Nos.150 and 152/A in the said village in favour of the defendant and three others. But, the defendant constructed an Oil Mill along with the compound wall and encroached a portion of the land belonging to the plaintiff in the north-western side, which is to the south-eastern side of the land of the defendant. The petitioner filed I.A.No.739 of 2014 for appointment of an Advocate Commissioner on the ground that the Surveyor conducted a survey on 02.03.2010 and he submitted a panchanama report also. In spite of the said report of the Surveyor, there was an encroachment by the defendant and in those circumstances, the physical features of the land held by the plaintiff and the defendant have to be measured by the Advocate Commissioner with the assistance of the qualified Surveyor. The said application was dismissed by the trial Court on 02.07.15 mainly on the ground that the suit is one of the oldest suits pending on the file of that Court and the petitioner has not given details of the land to be measured. Challenging the same, the present Civil Revision Petition was filed.

A perusal of the plaint shows that the plaintiff is alleging encroachment of an extent of 50 sq. yards in S.No.153 with specific boundaries and also states that an Oil Mill is situated in the said land. The Advocate Commissioner has to be appointed to see whether the Oil

Mill exists in Survey No.153 or not and the land in possession of the defendant, which was allegedly sold by the predecessors in interest of the plaintiff, by virtue of the registered Sale Deeds in June, 1993.

In the circumstances, the impugned Order dt.02.07.2015 is set aside and I.A.No.739 of 2014 is remanded to the trial Court for appointment of an Advocate Commissioner for measuring the physical features of the land of the plaintiff and defendant with the assistance of Surveyor and submit a report to the Court. The learned Senior Civil Judge, Nagarkurnool, shall appoint an Advocate Commissioner for the said purpose.

Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this case, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 11.02.2016

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