

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.1457 OF 2014

ORDER:

The Civil Revision Petition is maintained by defendants impugning the order of the lower Court passed on 22.01.2014 in I.A. No.504 of 2013 in O.S. No.206 of 2013 on the file of I Additional Senior Civil Judge, Kakinada.

2) Heard both sides and perused the material on record.

3) The I.A. No.504 of 2013 is filed under Order XXVI Rule 9 C.P.C to appoint an advocate commissioner to measure and demarcate the property, which is described in the plaint schedule and to correlate with the written statement contest of the defendants under a will dated 27.04.1973 as legatees for comparison whether plaint schedule and schedule of the will referred in the written statement is one and the same and appointed the advocate commissioner for the self same purpose. The para No.7 in the impugned order is as follows:

“In the result, the petition is allowed and Sri J.B.G.Sarma, Advocate has been appointed as Advocate Commissioner to localize the suit schedule property with the help of documents of the plaintiffs and the defendants as well as with reference to the revenue records and to note correct survey number of the suit schedule land and also verify whether the written statement schedule property and the plaint schedule property are one and the same or not. “

4) Thus, so far as the scope of the commission warrant issued by the Court pursuant to the order supra, is very clear that localization of the plaint schedule property is to be done firstly with reference to the plaintiffs claim with any documents of the plaintiffs in relation thereto and to mention whether the survey number mentioned in the plaint schedule property is correct or not with reference to the revenue record. It is then only to compare with the plaint schedule, the written statement schedule claimed by the defendants under the will, if

at all, tallied or not, so to mention. Thereby, the impugned order, no way requires interference for the same is not at all for fishing out information but for to resolve the real controversy, that too, when the written statement disputes identity of the plaint schedule, which the plaintiffs are claiming in possession. Needless to say, the Commissioner cannot make a mention with regard to any existing physical features but for to localize and demarcate. Even any work memos given by any of the parties, it is to be answered only within the scope. The lower Court is directed to make these as a further mention in the commission warrant.

- 5) Accordingly, the revision is disposed of. No order as to costs.
- 6) Consequently, pending miscellaneous petitions, if any, shall stand dismissed.

Dt.30.08.2016
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