

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.2314 of 2014

ORDER:

The plaintiff in O.S.No.715 of 2010 on the file of I Additional Junior Civil Judge, Kakinada is the petitioner herein. He filed the said suit for declaration and recovery of possession. In the said suit, I.A.No.213 of 2011 was filed for appointment of Advocate Commissioner. But, due to non-cooperation of the defendants, the Advocate Commissioner could not execute the warrant. Hence, on the direction of the Court, the warrant was returned on 23.04.2014. After return of the warrant, the petitioner herein filed I.A.No.320 of 2014 to re-entrust the warrant to the Advocate Commissioner, who was appointed earlier or to appoint a Commissioner afresh to measure the properties of both parties as well as the documents filed by the petitioner. But, the said application was dismissed by docket order, dated 09.06.2014 holding as follows:

“Heard the counsel for the petitioner on 23.04.2014 the commissioner returned the warrant stating as per the record both parties have not cooperated for executing the warrant. As seen from the docket order dated 23.04.2014 in the main suit.

Hence, there are no grounds for appointment of commissioner again. Hence is dismissed.”

2. A perusal of the papers filed by the petitioner indicates that it is not the non-cooperation of the petitioner, but it is the non-cooperation of the respondents for non execution of the warrant by the earlier Advocate Commissioner. Hence, the observation of the lower Court that both parties have not cooperated for executing the warrant is not correct. Now, it appears that the respondents have not filed counter in I.A.No.320 of 2014.

3. In the circumstances, the order, dated 09.06.2014 dismissing the application vide I.A.No.320 of 2014, is set aside and the matter is

remanded to the learned I Additional Junior Civil Judge, Kakinada for considering the said application afresh in accordance with law. Since the respondents have not filed any counter in the said application, they are given liberty to file counter. The said exercise shall be completed on or before 29.02.2016.

4. Accordingly, the Civil Revision Petition is allowed. No costs. Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

A. RAMALINGESWARA RAO, J

JANUARY 22, 2016

Note:

Despatch copy of order in one week.

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Date: 22.01.2016

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