

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

C.R.P. Nos. 4623 AND 4624 OF 2011

COMMON ORDER:

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The revision petitioners are plaintiffs in O.S. No.884 of 2006 filed for the relief of prohibitory permanent injunction against defendants 1 and 2 and pending suit they filed I.A. No.531 of 2011 for appointment of advocate commissioner and undisputedly the commissioner was appointed on their application to note down the physical features of the plaint schedule property and the Commissioner also executed the warrant having inspected the schedule property and submitted his report with plan.

2) In the course of trial, PWs.1 to 5 including 1st plaintiff were examined on behalf of plaintiffs and DWs.1 and 2 including 1st defendant were examined on behalf of defendants. It is after closing the evidence of both sides, I.A. No.588 of 2011 was filed by the plaintiffs—petitioners to reopen the evidence in the suit and I.A. No.587 of 2011 was filed requesting the Court to permit them to examine the advocate Commissioner, who filed report in I.A. No.531 of 2011 as a Court witness and the same were dismissed by the learned Junior Civil Judge holding in I.A. No.587 of 2011 that as the advocate commissioner was appointed on the plaintiffs' application, they can seek his examination as one of the plaintiffs' witness if at all so chooses and not to ask for examination of the Commissioner as court witness.

3) Heard and perused the material.

4) Said conclusion of the trial Court cannot be accepted. In fact, it is the duty of the Court in conducting trial in the quest for truth and as part of it, that too, when both sides filed objections for the commissioner's report and pursuant to the objections, when plaintiffs have to cross examine the commissioner, the Court would have allowed the petition within its power atleast by invoking Section 165 of Evidence Act apart from the provisions in C.P.C including under Section 151 C.P.C from the inherent powers inheres in the Court to subserve the ends of justice and the dismissal of the petition with that observation supra by the learned Junior Civil Judge is thereby unsustainable.

5) Having regard to the above, the Civil Revision Petitions are allowed by allowing I.A. No.587 of 2011 and 588 of 2011 and by directing the trial Court to examine the Commissioner as a Court witness with right of cross examination to the plaintiffs and defendants with reference to their objections filed on the Commissioner report, if necessary, also to put any questions by the Court within its power contemplated by Section 165 of the Evidence Act. No order as to costs.

6) Consequently, miscellaneous petitions, pending if any, in these Revisions shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt:03.06.2016
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