

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Civil Revision Petition No. 4524 of 2013

Order:

The petitioner herein is the plaintiff in OS No.71 of 2004 on the file of the Principal Junior Civil Judge, Sangareddy. After leading the evidence on behalf of the defendants, the plaintiff filed IA No.1092 of 2013 seeking appointment of an advocate-commissioner on the ground that the fourth defendant, who was impleaded on 16.08.2007, was claiming to have purchased part of the property covered under the suit schedule. The said fourth defendant was examined as DW.1. But, the property claimed by the fourth defendant appears to be different from the property covered by the suit schedule. On that ground, the petitioner sought appointment of an advocate-commissioner to identify the property claimed by the fourth defendant as per the boundaries shown in his sale deed. The fourth defendant filed a detailed counter opposing the said application stating that the appointment of advocate-commissioner in a suit for declaration of title and possession is not warranted. A separate counter was filed by the third defendant also. The application was dismissed by the trial Court holding as follows.

“Since all the parties are claiming being purchasers of part of the property under the registered sale deed with specific boundaries they have to establish their own case. In the present case advocate-commissioner has nothing to do with the dispute between the parties as the dispute pertains to title and more particularly validity of the documents and further it is for the parties to establish how they got sub-division survey numbers in their documents and they have to establish about the genuinity of contents of their documents. At present petitioner sought for the appointment of advocate commissioner to identify and locate the property of D4 on the ground as D4 claiming himself as a purchaser with specific boundaries under the registered sale deed burden lies on him only but one cannot take the assistance of the advocate commissioner to prove their case. It is a settled law that the boundaries prevails over the sub survey numbers. When all the parties are claiming with specific boundaries they have to establish their own case about the existence of properties as

well as validity of their documents. In view of the above circumstances, I feel that in the present case appointment of advocate commissioner is not required.”

2. I am in total agreement with the observations made by the trial Court in dismissing the application, as the present suit is a suit for declaration of title and for consequential relief of injunction, and it is for the plaintiff to prove his title to the property and if he proves his title to the property, the injunction will automatically be granted provided he establishes his possession. The appointment of advocate-commissioner has nothing to do with the evidence to be let in by the plaintiff as there is no dispute with regard to physical features of the suit schedule property.

3. In the circumstances, the Civil Revision Petition is dismissed. However, in the circumstances, no costs.

4. As a sequel thereto, the miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.
Date: 11.02.2016
Nsr

RAMALINGESWARA RAO, J.