

THE HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.1760 of 2016

ORDER:

Heard Mr. C. Prakash Reddy for petitioner. In spite of service of notice no representation for respondents.

2. Respondents filed I.A.No.11 of 2013 for appointment of Advocate Commissioner to note down physical features, measurements etc. of plaint schedule property with the assistance of Mandal Surveyor. The trial Court allowed the IA.

3. With the assistance of learned counsel for petitioner, I have perused the order impugned in the revision. Learned trial Judge has recorded the following reasons:

"9. After perusal of the judgment the ratio laid in the judgment passed by the Hon'ble Court of our State is wwhen an application for appointment of advocate commissioner at the threshold itself cannot be entertained as the same will amount to gathering evidence. Further there is also finality given in the said judgment that the initial burden lies on the plaintiffs to prove the identity of his own evidence. It is only after both parties adducing their respective evidence, if any ambiguity prevails with reference to the identity of the property, that the court on its own or on the application of either party, any appoint an advocate commissioner. Applying the same to the present case on hand which is filed in the year 2011, the contention of the petitioner is that there is ambiguity in the petition schedule property and therefore there is necessity to appoint an advocate commissioner in order to inspect the suit locality with the Assistance of Mandal Surveyor and note down the existence physical features and draw a plaint plan and to file his report in the interest of justice. Therefore, there is an ambiguity over one of the items of plaint schedule property and hence there is necessity to appoint an advocate commissioner in order to inspect the petition schedule property and give his report as prayed for. Accordingly, the point is answered."

4. I am of the view that the trial Court has exercised its jurisdiction for appointment of Advocate Commissioner. The exercise of discretion or

jurisdiction to appoint Advocate Commissioner, *prima facie*, appears to be tenable. The revision petitioner is the plaintiff and the suit is for injunction, hence, it is always open to him not only to prove his case but also place on record material against the Commissioner's report. The Advocate Commissioner appointment cannot and could not be treated as fishing in evidence supporting one party or other.

The civil revision petition fails and is dismissed with the above observation. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

S. V. BHATT, J

June 20, 2016
DSK