

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.5810 of 2015

ORDER:

The defendant in O.S. No.258 of 2009 on the file of the learned I Additional Senior Civil Judge (Fast Track Court), Mahabubnagar is the petitioner herein. The respondent herein filed the said suit for declaration of title and permanent injunction in respect of Plot bearing No.50 in Survey No.216 admeasuring 200 square yards situated at Ward No.8, Block No.3, Mettugadda locality of Mahabubnagar Town. The petitioner herein earlier filed I.A. No.100 of 2014 seeking summoning of Advocate Commissioner, who was appointed in O.S.No.42 of 2002 on the file of the learned Junior Civil Judge, Mahabubnagar, filed against him by the father of vendors of the plaintiff. Though the said application was allowed by the trial Court, it was set aside in C.R.P. No.751 of 2015.

Now, the present petitioner changed the provision of law and sought the same relief by praying the Court to summon the said Advocate Commissioner as Court witness. That application was dismissed by the trial Court on the ground that when this Court dismissed the earlier application in I.A.No.100 of 2014, the present application is not maintainable.

The affidavit filed in support of the present application in I.A.No.36 of 2015 states that an Advocate Commissioner was appointed in O.S. No.42 of 2002 and he visited the suit site and measured plot Nos.47 to 51 with the assistance of the Surveyor. The affidavit also states that he prepared the map of the above plots and identified the suit plot as plot No.49 in his report dated 21.11.2002. The Commissioner's report and the sketch were

already marked as exhibits B5 and B6. In those circumstances, he wanted examination of the Advocate Commissioner in order to prove exhibits B5 and B6.

Admittedly, the earlier suit was a suit for permanent injunction, filed by the father of the vendors of present plaintiff. The said suit was dismissed. The present suit is for declaration of title and the present plaintiff has to prove his title and the possession of property is not relevant for the purpose of giving a finding on the title. This Court in C.R.P. No.751 of 2015 dismissed the earlier application on the ground that the Advocate Commissioner was not shown as a witness in the list of witnesses. Whether he was shown as a witness in the list of witnesses or not, his evidence may not be material except for showing possession, for which purpose, the petitioner herein already filed exhibits B5 and B6.

Learned counsel for the respondent submits that the evidence is completed and the suit is posted for arguments on 05.02.2016.

In the circumstances, this Civil Revision Petition is dismissed, upholding the order in I.A. No.36 of 2015 dated 06.11.2015. No order as to costs.

Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.RAMALINGESWARA RAO, J

21.01.2016

MVA