

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

CIVIL REVISION PETITION No. 1486 of 2016

ORDER:

Aggrieved by the dismissal of his application by the lower appellate Court, for the appointment of an Advocate Commissioner, the appellant before the lower appellate Court has come up with the present revision.

2. Heard Mr. K.J.V.N. Pundareekakshudu, learned counsel for the petitioner, and Mr. N.J. Victor Moses, learned counsel for the respondent.

3. The petitioner's suit in O.S.No.1234 of 2010 on the file of the Rent Controller-cum-IV Additional Junior Civil Judge, Vijayawada, for a decree of permanent injunction to protect his possession, was dismissed, by a judgment and decree dated 27.01.2012. During the pendency of the suit, the petitioner did not ask for the appointment of any Advocate Commissioner.

4. Aggrieved by the dismissal of his suit, the petitioner filed a regular appeal in A.S.No.264 of 2012 on the file of the VII Additional District Judge,

Vijayawada. Pending the appeal, the petitioner came up with an application in I.A.No.648 of 2015 seeking appointment of an Advocate Commissioner. It was dismissed by the lower appellate Court, forcing the petitioner to come up with the above revision.

5. As stated earlier, the petitioner did not seek the appointment of an Advocate Commissioner pending the suit. There were no disputes about the identity of the property in the suit. The only reason, why the petitioner wanted the lower appellate Court to appoint an Advocate Commissioner, as seen from paragraph 5 of his affidavit, was that after the dismissal of the suit, the respondent was trying to dispossess him. Paragraph 5 of the affidavit filed in support of the application for the appointment of an Advocate Commissioner reads as follows:

"I further submit that while the matters stood thus, taking advantage of the dismissal of the suit filed by me, the respondent herein is trying to interfere with my peaceful possession and enjoyment of the plaint schedule property and trying to demolish the constructions in the plaint schedule property to cause monetary loss to me. In these circumstances, I am advised to file this petition to appoint an Advocate Commissioner to note down the physical features of the plaint schedule property and to take photographs of the plaint schedule property and make local enquiry with

*regard to the persons who are residing in the
plaint schedule property.”*

6. The reasons, as stated above, are hardly sufficient for the appointment of an Advocate Commissioner. As a matter of fact, the appropriate remedy that the petitioner ought to have sought is an interim injunction. Without being bothered about his disturbance to possession, the petitioner seeks a record of the act of dispossession in his application. Therefore, in the very interest of the petitioner, the lower appellate Court rightly rejected his application. Hence, I see no ground to interfere with the order of the lower appellate Court. Therefore, the Civil Revision Petition is dismissed.

Consequently, miscellaneous petitions if any pending in the revision shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

1st July, 2016
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