

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION NO.4857 OF 2015

ORDER:

The defendants in O.S.No.85 of 2013 on the file of the Junior Civil Judge, Kollapur, are the petitioners herein. The respondent herein filed the said suit seeking permanent injunction in respect of Acs.6.09 gts of land in different survey numbers of Ankiraopally Village, Kollapur Mandal, Mahaboobnagar District.

The petitioners herein, who are the defendants, filed a written statement with the counter claim seeking cancellation of the registered sale deed dated 08.07.2010 to the extent of Acs.3.04 ½ gts of land. The application for interim injunction is pending.

In the suit, the petitioners herein filed I.A.No.245 of 2014 for appointment of Commissioner to inspect the suit land and measure land from the Southern boundary of the land to the road and ridge, which are on the Northern side of the land and to find out the existence of the road ridge. The said application was filed on the ground that the plaintiff got executed the registered sale deed for a more extent than that was intended. The said application was resisted by the plaintiff and the trial Court dismissed the application by order dated 21.06.2015 with the following observations.

“By way of seeking appointment of Advocate Commissioner under the pretext of noting down the physical features indirectly for finding out the factum of possession cannot be entertained by appointing Advocate Commissioner and material issue of determining the possession cannot be left to Advocate Commissioner. The petitioner is seeking to appoint Advocate Commissioner to inspect the suit land for finding out the road and ridge and on the other hand pleads that the respondent has shown wrong extent of land though he is in possession of Acs.3.04 ½ gts and not Acs.6.09 gts. It seems that the real object behind filing this petition is to find out whether the respondent is in possession of Acs.3.04 ½ gts or not. In the guise of noting down the physical features the petitioner is trying to set up evidence to himself.

It is well settled proposition of law that setting up of evidence or finding out possession in the guise of noting down

the physical feature of the suit schedule property cannot be permitted by appointing Advocate Commissioner and even the Order 26 Rule 9 CPC is not to assist a litigant to collect evidence when a party can procure evidence itself. Considering the facts and circumstances of the case, I feel that there are no grounds which would compel this Court for appointment of Advocate Commissioner. Hence the petition is dismissed.”

I am in agreement with the order of the trial Court and it does not warrant any interference.

The Civil Revision Petition is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(A.RAMALINGESWARA RAO, J)

20th January 2016
RRB