

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

* * * *

CIVIL REVISION PETITION No.2385 of 2015

Between:

K.Gopi Rao

....Petitioner

and

B.Sujatha and another.

....Respondent

JUDGMENT PRONOUNCED ON : 09.02.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : No
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

-

CIVIL REVISION PETITION No.2385 of 2015

ORDER:

This Civil Revision Petition is filed against the order dated 20.03.2015 in I.A.No.266 of 2014 in O.S.No.85 of 2011 on the file of the learned Junior Civil Judge, Guntakal.

The petitioner herein is the plaintiff in O.S.No.85 of 2011 on the file of the learned Junior Civil Judge, Guntakal. The said suit was filed for declaration of title and for recovery of possession in respect of 270 square feet or 3 yards in western side from north to south in the total extent of 210 square yards of property owned by the plaintiff situated in Survey No.185 within Guntakal Municipal limits. The defendant filed

written statement and issues were framed. At that stage, after examination of P.Ws.2 and 3, the petitioner filed I.A.No.266 of 2014 for appointment of Advocate Commissioner to inspect and measure the suit schedule property and to note down all the physical features on the ground that the first respondent, who is the defendant, is claiming right over the site belonging to the plaintiff and made construction. In view of the same, he felt that appointment of the Advocate Commissioner is necessary. The respondents filed counter denying the encroachment and further stating that in order to succeed in the suit, the plaintiff has to prove his case of having title to the property and encroachment by the respondents, but he cannot ask for appointment of Advocate Commissioner for collecting evidence. The trial Court dismissed the application by order dated 20.03.2015, observing as follows:

“Even otherwise, the appointment of commissioner shall be made only when the property is prone to decay and there is no possibility for its revocation. The appointment of advocate commissioner shall also be made where the court after let in the evidence could not arrive at a proper conclusion. Except under these two circumstances the appointment of commissioner shall not be made as rightly contended by the counsel for the respondents. If at all it is the contention of the petitioner that the respondents grant his land he would have measured the same with the help of Mandal Surveyor, but not after filing the suit that too, two years after commencement of trial. Considering all these things it appears that the petitioner wants to drag on the matter as long as possible and keeping the matter in the state of hibernation which is not permissible.”

Since this is a suit for declaration of title and recovery of possession, it is for the plaintiff to prove his title and encroachment by the defendants. In the schedule to the plaint, the petitioner/plaintiff has given clear description of the property. If there is any encroachment, as alleged by the plaintiff, the burden is on the plaintiff. But, the Court cannot decide on the basis of the measurements of the respective properties held by the plaintiff and the defendants.

In the circumstances, this Court sees no reason to interfere with the impugned order.

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

(A.RAMALINGESWARA RAO, J)

09.02.2016

VS