

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.2651 OF 2016

DATED:10-06-2016

Between:

K. Sambasiva Reddy ... Petitioner

And

Chilla Rama Rao Reddy
and others ... Respondents

COUNSEL FOR THE PETITIONER: Mr. S. Sridhar

COUNSEL FOR RESPONDENT NOS.1 and 2: Mr. S.V.R.
Subrahmanyam

THE COURT MADE THE FOLLOWING:

ORDER:

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This civil revision petition is filed against order dt.21.4.2016 in I.A. No.1501 of 2015 in O.S. No.107 of 2013, on the file of the II Additional District Judge, Visakhapatnam.

I have heard Mr. S. Sridhar, learned counsel for the petitioner, and Mr. S.V.R. Subrahmanyam, learned counsel for respondent Nos.1 and 2, and perused the record.

The petitioner filed the above-mentioned suit for declaration of title and recovery of possession of the plaint schedule property from the respondents. After completion of the pleadings, the petitioner has filed I.A. No.1501 of 2015 for appointment of an Advocate Commissioner to localize the survey numbers 52, 53 and 54 on land along with sub-divisions therein as shown in the plaint plan, and also to localize the extent of Acs.3.50 cents in Sy. No.52/1-B1 on land, with the assistance of District Surveyor and total station instrument, and with the help of municipal survey records and other documents produced by them into the Court and the documents produced by the defendants, and also to arrange for taking necessary photographs and videos.

In the affidavit filed in support of the said application, the petitioner stated that in order to prove his title, he has produced Will dt.10.2.1987, subsequent Will dt.6.5.2010, patta dt.6.1.1941 and also rough plan. He has further averred that the respondents in order to prove their rights over an extent of Acs.3.50 cents in Sy.No.52/1 B1, produced ground rent patta proceedings in the court. That physical inspection of plaint schedule property to note the stage of construction in the schedule property by an Advocate Commissioner is necessary because the respondents are trying to alter the physical features of the

property and are proceeding with the constructions in haste in spite of the pendency of the suit and the injunction application. The petitioner further averred that the localization of the property with the assistance of District Surveyor with the help of municipal survey records and documents will also enable the Court to appreciate the rival contentions of the parties and to come to a correct conclusion. As the said application was dismissed by the lower Court, the petitioner has filed this civil revision petition.

Under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, the main purpose of appointing an Advocate Commissioner is to elucidate any matter in dispute. It does not appear from the pleadings of the parties that the identity of the property is in dispute and therefore the question of localizing the property does not arise. It is therefore wholly unnecessary for the petitioner to seek appointment of an Advocate Commissioner. Being the plaintiff, the burden is on him to prove his case by producing required evidence and he cannot seek to rely upon the help of an Advocate Commissioner for this purpose. Unless he has material in his possession to show that he has title over the suit schedule property, he should not have filed the suit at all. If, for any reason, the petitioner wants to establish the identity of the property with reference to the boundaries mentioned in the documents on ground, he is always entitled to seek survey of the property by approaching the survey officials on his own, and produce the survey reports and examine the surveyor concerned as his witness. Instead of following this procedure, the petitioner appeared to have devised a shortcut method of filing the application for appointment of an Advocate Commissioner. This, in my opinion, surely is not the purpose for which the Advocate Commissioner is appointed.

In the light of the above discussion, I do not find any reason to interfere with the order of the lower Court and the civil revision petition is accordingly dismissed.

As a sequel to dismissal of the civil revision petition, C.R.P.M.P.

No.3379 of 2016 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

10-06-2016

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Note: LR copies to be marked.

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