

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.2250 of 2017

ORDER:

Heard both sides and perused the grounds of the revision and the impugned dismissal order of the lower Court, dated 13.02.2017, in I.A.No.1302 of 2016 in O.S.No.791 of 2011, dismissing the application of the revision petitioners-defendants in the suit of the plaintiff for bare injunction, in relation to 80 sq. yards of the site with Door No.10-1-189, within the boundaries described therein, for an appointment of Advocate Commissioner to note down the physical features and to measure and demarcate the property by disputing particularly the northern and eastern boundary with a claim that the north of the plaintiff there are private lands of P.Yakub and Mallesham and not five lane as claimed in the plaint schedule and in between the house of the defendant and to the suit property, there is vacant site of the defendant and plaintiff under guise of the suit for bare injunction in relation to plaint schedule is making a claim over the property of the defendant and to a property not in existence within the boundaries. Once such is the case, appointment of a advocate commissioner is must to note down the physical features, if necessary to measure and demarcate the property. The dismissal of the application by the lower Court on contest mainly by referring to the noting of physical features in a suit for injunction cannot be permitted to gather of evidence to prove the case, which can be done by adducing evidence is unsustainable, more particularly from the very

wording of Order XXVI Rule 9 C.P.C. and Section 75 C.P.C. of an advocate can be appointed for purpose of investigation and for purpose of elucidating the matter in controversy. In view of the same and also from the Division Bench expression of this Court in **Chalapati Veeranna and others v. Chalapati Venkatachalam**¹ in holding even an advocate commissioner can be appointed ex parte and there is no set of rules or settled law as to when advocate commissioner can be appointed.

2. Having regard to the above, the dismissal order of the lower Court is set aside and the matter is remitted back to the lower Court to hear both parties and appoint an advocate commissioner by naming a person with survey knowledge if any and with assistance of the Mandal Surveyor concerned to measure and demarcate with reference to the revenue record and documents of both parties and with reference to work memos and to note down the existing physical features. However, it will not prevent the trial Court to proceed with recording of the defendants' evidence by proceeding with trial.

3. Accordingly and in the result, the civil revision petition is allowed by remanding the matter to the lower Court for disposal as above indicated.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

Dr. B. SIVA SANKARA RAO, J

26th December 2017.
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¹ AIR 1959 AP 170