

THE HON'BLE SRI JUSTICE S. V. BHATT

Civil Revision Petition No. 5346 of 2016

ORDER:

Defendants are the Revision Petitioners. The suit is filed by respondent herein for perpetual injunction. The Revision Petitioners filed I.A.No.280 of 2016 under Order XXVI, Rule 9 of Code of Civil Procedure for appointment of Advocate-Commissioner to note down physical features and take measurements of suit schedule property, as requested by parties together with work memos and file a report.

2. The trial Court, through the order impugned in the Revision, recorded findings that the suit is coming for further evidence of defendants and parties have traveled a long way on the issues settled between them. It is further held that the revision petitioners herein can certainly discharge their onus either by placing before the Court the primary or secondary evidence of survey reports etc. The prayer if accepted amounts to gathering evidence in a simple suit for injunction. Hence, the revision.

3. The learned counsel for petitioners contends that the prayer of Revision Petitioners if accepted enables the Court to decide the fact in issue between the parties and the refusal to accept the prayer for appointment of Advocate-Commissioner is not confirming the jurisdiction conferred on the trial court.

4. I have perused the material available on record. This Court is of the view that the trial Court, which is in the grips of issues for decision in the suit, considered the prayer in the suit, stage of the matter, examined the purpose for which the appointment of Advocate-Commissioner is sought for, and after properly exercising its discretion on each one of the above circumstances, the trial Court declined the prayer. This Court is in agreement with the findings recorded by the trial Court. No ground is made out to interfere with the order under Revision.

5. Thus, the revision petition fails and it is accordingly dismissed. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.

January 27, 2017
Kv



S. V. BHATT, J

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C.R.P.No. 5346 of 2016

January 27, 2017

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