

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.6199 of 2016

ORDER :

Heard both sides. Perused the grounds urged in the revision and impugned order of the lower Court.

In the suit O.S.No.269 of 2015 for bare injunction, the petition is filed by the plaintiff to appoint an Advocate-Commissioner to localize whether tombs of B.Subba Reddy and Mahipal Reddy are located in Government waste land in Sy.No.743 known as Jugarigutta or in the property covered by the plaint schedule of the plaintiff, from the dispute by the defendants that same is in Government land and it is sought for not only noting down physical features of the plaint schedule property but also demarcation with the help of the Mandal Surveyor Amandagur, Anantapur district. The Court after contest and before commencement of trial, no doubt, there is no bar as to at which stage, to appoint the Commissioner concerned, including for the fact that even by any exparte order at the time of filing of suit also can be appointed but for to consider with reference to facts of each case for any necessity and purpose how far to serve more particularly from the wording of Order XXVI Rule 9 CPC for the purpose of elucidating matters in controversy of the case in hand, the lower Court only appointed Advocate-Commissioner to note down the existing physical features with the assistance of Mandal Surveyor to be practically negating purpose of demarcating though the real controversy to resolve is the requirement of demarcation.

Having regard to the above and in the result, the Revision is allowed by setting aside the order of the lower Court in I.A.No.916 of 2016 dt.15.11.2016 on the file of the Principal Junior Civil Judge, Kadiri and the same is restored to file with a direction to keep it pending and after commencement of the evidence of the plaintiff, the trial Court at any stage to consider appointment of Commissioner not only for mere noting of physical features but also for survey and demarcation and to prepare a rough sketch and to submit before the Court localizing where the so called tombs of Subba Reddy and Mahipal Reddy if any are in existence.

Consequently, miscellaneous petitions pending, if any, shall stand closed.



Dr. B. SIVA SANKARA RAO, J

Dt. 17.11.2017.
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