

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.206 OF 2017

O R D E R

The plaintiff in O.S.No.409 of 2013 on the file of the learned I Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar, is in revision aggrieved by the order dated 04.11.2016 passed by the trial Court dismissing I.A.No.1088 of 2014 filed therein. The said I.A. was filed by the petitioner/plaintiff under Order 26 Rule 9 CPC seeking appointment of an Advocate Commissioner to note down the physical features and to fix the boundaries, apart from taking photographs of the suit schedule property, with the help of a Surveyor. The only ground on which the trial Court denied this relief to the petitioner/plaintiff and dismissed his I.A. was that the temporary injunction application filed by him in I.A.No.1089 of 2014 in the suit was dismissed on 26.02.2016. The trial Court opined that as the petitioner/plaintiff failed to establish his legal right and lawful possession over the suit schedule property, appointment of an Advocate Commissioner did not arise.

This approach of the trial Court is completely misconceived. Merely because the interim injunction application was dismissed, it did not have the effect of automatic dismissal of the suit. Once the suit was kept pending and the issues therein were to be adjudicated independently, it was always open to the petitioner, being the plaintiff therein, to file an independent application for appointment of an Advocate Commissioner. The trial Court necessarily had to consider the said application on its own merits in accordance with law. Mere dismissal of the temporary injunction application did not foreclose the petitioner/plaintiff from seeking appointment of an Advocate

Commissioner. The order under revision is accordingly set aside and the matter is remitted to the trial Court for consideration afresh of I.A.No.1088 of 2014 in O.S.No.409 of 2013 on its own merits and in accordance with law. All issues are left open.

The civil revision petition is allowed to the extent indicated above. As this is a second round of litigation in so far as this I.A. is concerned, the trial Court shall endeavour to dispose of the same expeditiously. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

30th JUNE, 2017

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SANJAY KUMAR, J

