

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.483 of 2012

ORDER :

The Civil Revision Petition is filed by the petitioners/ defendants, aggrieved by the order dated 28.06.2011 in I.A.No.407 of 2011 in I.A.No.190 of 2011 in O.S.No.259 of 2011 on the file of the Principal Junior Civil Judge, Warangal.

Heard both sides and perused the grounds urged in the revision and the impugned order, appointing an advocate commissioner to note down the physical features as well as to measure the land of one Kadari Ilaiah and schedule property with the help of the Surveyor.

In fact, the main contention in the grounds of revision of the defendants is that earlier, the vendor of the plaintiff went unsuccessful in maintaining the suit for declaration and possession for the self same property and subsequently sold to the plaintiff and plaintiff, now maintained, a suit for bare injunction, which is not maintainable *per se*. It is the matter to be decided by the trial Court on maintainability of the very suit for bare injunction, by virtue of the factual matrix in dispute, if any, and premature for this Court to make any observation. The other contention is that the trial Court having held in the pending suit for permanent injunction on the application for temporary injunction, maintained by the plaintiff not entitled to

the injunction for not in possession, went wrong in the commission petition, in saying, as if the plaintiff/ petitioner is in possession. Any type of typographical mistake or in advert reference will not make it an evidence much less to bind the parties. The cloud is cleared thereby, as that itself is not a ground to interfere with the impugned order of the lower Court in appointing an advocate commissioner. The third contention is that the appointment of an advocate commissioner for the purpose of measurement and demarcation is nothing but, fishing out information also, in asking to note down the physical features. Fishing out information is only oral collection from enquiry other than noting physical features, thereby, that contention cannot stand.

Coming to the last contention, when the total extent of the property in Sy.No.23 of Gopalpur Village, Hanamkonda Mandal, Warangal District is Ac.3.38 gts., the impugned order of the lower Court to measure the land through Surveyor, not sustainable, to demarcate only the property of the plaintiff and it is also impossible, without identifying the total extent and demarcation of the respective extents, with reference thereto. So far as that aspect is concerned, by clearing the same in disposal of this revision, both parties to give work memos for the Surveyor to identify the total extent and with reference to the sale deeds of the parties and the other persons, being effected, if any, by notice to them also to demarcate the same. Any

objections from the Commissioner report are left open. It is made clear that the Commissioner cannot make any oral enquiry to form part of the record, to fish out information, but for, to note the existing physical features as to the date of the visit if any, and cause measure and demarcate the property with the Surveyor assistance.

With the above observations, the Civil Revision Petition is disposed of, as the main purpose of appointment of commissioner is the purpose of elucidate the matters in controversy as contemplated by Order XXVI Rule 9 r/ w Section 75 C.P.C.

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

Date:03-11-2017

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Dr. B. SIVA SANKARA RAO, J

