

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

Civil Revision Petition No.3150 of 2018

ORDER:

Aggrieved by an order passed by the trial Court refusing to appoint an Advocate Commissioner to note down the physical features, the plaintiff in the suit has come up with the above revision.

2. Heard Mr. M.K. Raj Kumar, learned counsel for the revision petitioner.

3. The suit filed by the petitioner herein was for a recovery of possession of a property described in suit B-schedule, measuring an extent of 62 square yards. The plaintiff took out an application earlier in I.A.No.73 of 2016 for the appointment of an Advocate Commissioner to note down the physical features. The same was dismissed by the trial Court by an order dated 24-08-2017.

4. Contending that the first application for appointment of an Advocate Commissioner was filed before the evidence was brought on record and that the said application was dismissed by the trial Court on the ground that it was not the appropriate stage to consider the said application, the petitioner filed a fresh application for appointment of an Advocate Commissioner. But the trial Court dismissed the same forcing the plaintiff to come up with the above revision.

5. At the outset, it should be pointed out that the order under revision is a common order passed in two applications, one for reopening and another for appointment of an Advocate Commissioner. Both the applications were dismissed by the trial

Court. But the petitioner has chosen to file a revision only as against the dismissal of the application for appointment of an Advocate Commissioner.

6. The contention that the first application in I.A.No.73 of 2016 was dismissed only because the Court below considered that it was not the appropriate stage is unacceptable. Paragraph 7 of the order of the trial Court dated 24-08-2017 in I.A.No.73 of 2016 shows that the trial Court went into great detail before dismissing the application for appointment of an Advocate Commissioner. Merely because the trial Court used the words "at this stage", the petitioner cannot claim that at a subsequent stage he is entitled to seek the appointment of an Advocate Commissioner.

7. The plaint averments proceed on the basis that while putting up a construction in plaint A-schedule property, the plaintiff left a vacant space on the western side and that by encroaching into the said space, the defendants put up a construction. This is something that has to be proved by the plaintiff by evidence. Even in the first order, the trial Court has observed that the Court cannot allow a party to collect evidence. Therefore, the dismissal of the application cannot be found fault with. Hence, the Civil Revision Petition is dismissed.

As a sequel thereto, miscellaneous petitions, if any, shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 08-06-2018

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