

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 5300 of 2018

ORDER:

1) Assailing the order dated 23.03.2018 passed in I.A.No. 119 of 2017 in O.S.No.235 of 2012 on the file of the Senior Civil Judge, Peddapuram, wherein an application filed under order XXVI Rule 9 and Section 151 of C.P.C. to appoint an advocate-commissioner to note down the physical features of plaint sketch and schedule property and draw a rough plan showing the Ramalayam, Well and lane etc. after taking work memos from both parties, was dismissed, the present Civil Revision Petition came to be filed.

2) The facts in issue are as under:

The petitioners/ plaintiffs filed O.S.No.235 of 2012 seeking the following reliefs.

“ 1. To set aside the sale deed dated 19.02.2011 of SRO, Peddapuram bearing document No.589/ 2011, executed by the 1st defendant in favour of the 2nd defendant for the plaint sketch A B C D marked portion and plaint schedule property.

2. Consequently to direct the defendants to deliver A B C D portion shown in the plaint sketch property within the time stipulated by the Court. In default the

plaintiffs are at liberty to get the same through process of law.

3. To award costs of the suit.

4. And to grant such other reliefs which the Court deems fit and proper in the circumstances of the case.”

When the suit is posted for arguments, the present application came to be filed seeking appointment of an advocate-commissioner to note down the physical features of the plaint schedule property. In the affidavit filed in support of the said petition, it is stated that there is a Ramalayam, which is shown as E F G H in the plaint sketch since long time. There is a small lane towards north of said Ramalayam, which is shown as D C F E in the plaint sketch. So also there is vacant site towards further north of said Ramalayam, which is shown as A B C D in the plaint sketch and schedule. There is a Well in the aid A B C D site, which is shown as “W” and pan shop of 4th defendant was shown as “P” and small thatched house, where the 1st defendant is residing was shown as “T” in the plaint sketch. Since the plaint sketch did not reflect the correct topo features, etc., they filed the present petition, seeking appointment of an advocate-commissioner.

3) A counter came to be filed denying the averments made in the affidavit. It is stated that no advocate-

commissioner should be appointed for collection of evidence. It is further stated that only to drag on the proceedings, the present petition came to be filed.

4) After considering the rival submissions, the trial Court dismissed the same. Aggrieved by the same, the present Civil Revision Petition came to be filed.

5) Learned counsel for the petitioners would submit that there is a Ramalayam and a small lane towards north of said Ramalayam. It is urged that to substantiate the case of the plaintiffs, there is every necessary to note down the physical features of the plaint schedule property.

6) Learned counsel for the respondents would submit that the suit itself is not maintainable. When the suit is posted for arguments, the question of appointing an advocate-commissioner to note down the physical features would not arise.

7) It is to be noted here that the suit is filed for cancellation of sale deed executed by the 1st defendant in favour of the 2nd defendant in the year 2012. The plaintiffs' side evidence was closed on 08.02.2018 and the case is posted for arguments. It appears that to cover up the latches, they want to collect evidence by appointing an advocate-commissioner.

8) Having regard to the above, I see no reason to interfere with the impugned order. Accordingly, all the Civil Revision Petition is dismissed.

9) As a sequel thereto, Miscellaneous Petitions pending if any, shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

12.10.2018

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