

HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION No.5749 of 2018

ORDER:

The plaintiffs in O.S.No.84 of 2009 are the revision petitioners. When the suit is posted for arguments, I.A.No.353 of 2018 is filed for appointment of an Advocate Commissioner. The trial Court recorded the following findings and rejected the application.

“On perusal of the record, it is clear that the main suit is filed by the petitioners/plaintiffs against the respondent/defendant for the relief of declaration of title and perpetual injunction. On 31.12.2013, the respondent/defendant filed his written statement. On 14.03.2017 additional written statement of respondent/defendant was filed. On 27.03.2017 issues were framed and posted the matter for trial. In this suit, both the parties led their evidence and their evidence was closed and posted the matter for arguments. At the stage of arguments, the petitioners filed the present petition for appointment of an Advocate-Commissioners to note down the physical features of the suit schedule property as to whether the water tank is in existence in the suit land or not without filing any reopening petition along with this petition. The suit is of the year 2009 and as per the directions of the Hon'ble High Court of Judicature, it shall be disposed-off expeditiously. There are no sufficient grounds mentioned in the petition for appointment of commissioner.

From the above discussion, this Court came to conclusion that there are no merits in the petition and the petition is filed at the belated stage. Further, the

petitioner filed the present petition seeking appointment of commissioner without filing any reopening petition along with this petition as contended by the respondent/ defendant. Therefore, the petition is liable to be dismissed. The point is answered accordingly.”

Hence, the Civil Revision Petition.

Mr.Siva Sankara Rao Borra contends that the trial Court misdirected itself by holding that the petitioners are trying to gather evidence through appointment of Advocate Commissioner. According to him, the physical features, if are noted by the Advocate Commissioner and the report is filed before the Court, the report of the Advocate Commissioner helps the adjudication.

The contention is noted and after perusing the order under revision and also the affidavit filed by petitioners, this Court is of the view that the request for appointment of Advocate Commissioner is rejected by the trial Court for valid and tenable reasons.

The revision fails and is accordingly dismissed. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.
No order as to costs.

S. V. BHATT, J

Dt: 05-10-2018
Prv

