HON'BLE SRI JUSTICE S.V. BHATT

C.R.P.No.6203 OF 2017

ORDER:

Heard Mr.Mahboob Hussain for petitioners.

The defendants in O.S.No.21 of 2007 in the Court of the Senior Civil Judge, Manthani are the revision petitioners. The revision petitioners filed I.A.No.75 of 2017 under Order XXVI Rule 9 CPC for appointment of Advocate Commissioner to measure the houses of respondents/plaintiffs constructed in Sy.No.104 i.e., the suit survey number situated at Rompikunta Village of Kamanpur Mandal.

The averments in brief for appointment of Advocate Commissioner are that the details furnished in the plaint and the report dated 12.04.2013 of Advocate Commissioner in this behalf are different. The Mandal Surveyor who assisted the Advocate Commissioner avoided measuring the houses of plaintiffs/respondents herein and also the remaining land available in the said survey number. The respondents objected to the prayer of appointment of Advocate Commissioner by contending that the commission was appointed three times and the commission work was executed in the presence of Assistant Director. The appointment of Advocate Commissioner to survey the petition land and identify the same in view of earlier reports is unavailable.

The learned trial Judge has taken note of respective objections and rejected the prayer for appointment of Advocate Commissioner primarily on the ground that the revision petitioners did not file objections to the commissioner's report dated

12.04.2013. The appointment of Advocate Commissioner afresh while keeping the earlier report on record does not arise. Hence, the revision.

Mr.Mahboob Hussain has substantially reiterated the stand taken in the affidavit.

I have perused the record. *Prima facie,* this Court is of the view that the trial Court keeping in view the Advocate Commissioner's report dated 12.04.2013 felt that the appointment of Advocate Commissioner afresh does not arise. It is not in dispute that the Commissioner's report dated 12.04.2013 is filed in O.S.No.21 of 2007. The petitioners, if have objections on the said report, ought to have filed objections, let the evidence in support of their objections and simultaneously seek for scrapping the report and thereafter a prayer, if circumstances warrant for appointment Advocate Commissioner, could have been made. The procedure followed for appointment of Advocate Commissioner in the light of earlier report is untenable and illegal. The trial has rightly dismissed the application filed by petitioners.

This Court is in agreement with the reasons stated by the trial Court. No ground warranting interference under Article 227 of the Constitution of India is made out.

Revision fails and is, accordingly, dismissed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, stands closed.

S.V.BHATT, J

12th March, 2018
Lrkm