

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P.No.6109 of 2017

ORDER:

Heard Sri Chetluru Sreenivas, learned counsel for the petitioner and Sri L.J. Veera Reddy, learned counsel for the respondents.

2. Petitioner is plaintiff in O.S.No.163 of 2012 on the file of Principal Junior Civil Judge, Chittoor, which he filed for a declaration that he had a half share in the water through the channel from the Well in Sy. No.351/2B of Basavapalli village, Gudipala Mandal of Chittoor District and for a perpetual injunction.

3. In the plaint, he asserted that there is a Well in the said survey number and there is a channel through which water from the Well was being taken by him, but the respondents are preventing him from taking the water from the said Well.

4. On 02-05-2012 itself, he filed I.A.No.544 of 2012 for appointment of an Advocate Commissioner to note down the physical features of the existing Well, the Well water as well as the channel, contending that the electricity service connection to the said Well stands in the name of his father.

5. This application was opposed by the respondents stating that the Well in Sy. No.351/2B is the exclusive Well of the 1st respondent, that there was also a joint Well in Sy. No.350/4 and by wrongly mentioning the survey numbers, petitioner is claiming the

exclusive Well of 1st respondent. It is contended that the petitioner had only a share in the joint Well situated in Sy. No.350/4 and not in the Well in Sy. No.351/2B.

6. By order dt.31-01-2017, the Court below dismissed the said application on the ground that though the I.A.No.544 of 2012 was filed along with the suit, trial has commenced and that there is no dispute about physical features.

7. Assailing the same, this Civil Revision Petition is filed.

8. Learned counsel for the petitioner contends that when there is a clear dispute about location of the Well in respect of which right is claimed by the petitioner, appointment of Advocate Commissioner is necessary and the petitioner cannot be blamed for the failure of the Court to decide the said I.A. which had been pending from 2012 till July 2017.

9. Though the learned counsel for the respondents sought to support the order passed by the Court below, I am also of the opinion that when the location of the Well in respect of which right is claimed by the petitioner, is disputed, appointment of the Advocate Commissioner is warranted to find out in which survey number it is located and it would enable the Court below to decide the suit. Also, the petitioner cannot be blamed for the failure of the Court below in deciding the said I.A. and keeping it pending till July, 2017, though it was filed in 2012.

10. Accordingly, the Civil Revision Petition is allowed; the order dt.31-07-2017 in I.A.No.2012 in O.S.No.163 of 2012 of the Principal Junior Civil Judge, Chittoor, is set aside; and the said I.A. is allowed. No costs.

11. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-01-2018
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