

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No. 5494 of 2015

Date:18.12.2015

Between :

Akkim Ramanjineyulu S/o Akkim Anjinappa

R/o S C Colony, Bathalapalli village and mandal

Anantapuram

... Petitioners

And

Pittu Nagendra S/o Subbarayudu

R/o Bathalapalli village and mandal

Anantapuram

... Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION No. 5494 of 2015

ORDER:

Petitioner is defendant in O.S. 49 of 2013 on the file of the Junior Civil Judge, Dharmavaram. Petitioner filed I A No. 398 of 2015 under Order 26 Rule 9 CPC for appointment of Advocate Commissioner to visit the suit schedule property, to note the hut, shed, existing foundation and such other physical features and file report along with plan. The I.A. was dismissed by order dated 9.11.2015. Aggrieved thereby this revision is filed.

2 Learned counsel for petitioner placed reliance on decision of this Court in MALAMPATI KOTESWARA RAO Vs BANK OF BARODA, NADENDLA BRANCH. In the said case, defendant therein filed interlocutory application seeking appointment of Advocate Commissioner and having regard to the facts of the said case, trial Court granted the relief as prayer for. On revision filed before this Court, having regard to the peculiar facts of the case this Court while upholding the

decision of the trial Court, with slight modification, disposed of the said revision.

3 The trial Court on detailed consideration of the matter and following the decision of this Court in ARREDLA RAMA REDDY Vs ARREDLA ALIVELAMMA, dismissed the instant interlocutory application. The trial Court found that suit is filed for permanent injunction and petition is filed by defendant seeking appointment of Advocate Commissioner to note down the basement and hut constructed to prove his possession over the suit property. The trial Court held that the suit is filed for perpetual injunction and the claim for perpetual injunction is based on position as obtaining at the time of institution of the suit and therefore the question of taking the present physical features of the suit property has no relevance to the issue involved.

4 Having heard the learned counsel on either side and on perusal of the material available on record, this Court is of considered opinion that in the facts of the case, the decision relied upon by the trial Court applies in all fours to the facts of the case and the decision relied on by the petitioner do not come to his aid. I do not see any error committed by the trial Court warranting interference by this Court. The revision fails and accordingly the same is dismissed. No costs.

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P.NAVEEN RAO,J

DATE: 18.12.2015

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HONOURABLE SRI JUSTICE P. NAVEEN RAO

Date:18.12.2015

