

THE HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

CIVIL REVISION PETITION No.2391 OF 2015

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ORDER:

Heard learned counsel for the petitioner and learned counsel for the respondents.

Defendant filed I.A.No.152 of 2015 before the I Additional Junior Civil Judge, Tirupati, for appointment of an advocate commissioner to note down the physical features and local investigation of the plaint schedule property. The Court below dismissed the same under the impugned order, dated 31.03.2015. Aggrieved thereby the present revision is filed.

The relief sought for in the suit by the respondent/plaintiff is for a declaration that 'A' schedule property is meant for use and enjoyment of the plaintiff and others for ingress and egress to their lands and for consequential permanent injunction. In the said suit, obviously the burden of proof is on the plaintiff. However, the petitioner/defendant made an application for appointment of advocate commissioner to note down the physical features as the defendant denies the cart track as claimed by the plaintiff.

Learned counsel for the petitioner, therefore, states that whether cart track exists is required to be ascertained and hence application for appointment of advocate commissioner is made.

I am unable to accept the said contention. Firstly, the burden of proof is entirely on the plaintiff and secondly though the decision cited by the Court below for

reference is incomplete,

it clearly covers the issue. Hence, I do not see any reason to interfere with the impugned order passed by the Court below.

Hence, the Civil Revision Petition is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

VILAS V.AFZULPURKAR, J

30.10.2015

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