

THE HON'BLE SRI JUSTICE K.C.BHANU

CIVIL REVISION PETITION No.39 OF 2015

ORDER:

The Civil Revision Petition is directed against the order, dated 8.12.2014, in I.A.No.998 of 2014 in O.S.No.77 of 2013 on the file of the Principal Junior Civil Judge, Repalle, whereunder and whereby, petition filed by the petitioners/defendants under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 to appoint an Advocate Commissioner to note down the physical features of the plaint schedule property and other neighbouring features in the locality, and to file a report with sketch, was allowed.

2. Respondent herein/plaintiff filed O.S.No.77 of 2013 against the petitioners herein/defendants for permanent injunction restraining defendant No.1 from ever interfering with the plaintiff's ingress and egress to reach the main road through the pathway BEFG situated to the north-east corner of the plaint schedule property in which the plaintiff has rights; for the relief of mandatory injunction to remove the boundary stones erected by the defendants at the points YZ in the plaint schedule property covering an extent of 34.66 sq.yards and also for recovery of possession; to declare that the plaintiff is the absolute owner of the occupied portion of plaint schedule property by the defendants to an extent of 34.66 sq.yards i.e., AYDZ shown in the plaint plan and for costs of the suit. Pending suit, the defendants filed the aforementioned Interlocutory Application for appointment of Advocate Commissioner and the same was allowed, and one

Sri K.V.Surya Rao, Advocate, was appointed as an Advocate Commissioner to note down the physical features of the plaint schedule property and other neighbouring features in the locality and to measure the disputed path way site with the help of Mandal Surveyor, as per the documents of both parties, and to file a report with

sketch. Challenging the finding in the impugned order with regard to the measurement of the disputed pathway site, the present Revision Petition is filed by the defendants.

3. Learned counsel for the petitioners/defendants contended that when there is no pathway, the question of measuring the same does not arise and therefore, she prays to set aside the finding in the impugned order with regard to the measurement of the pathway.

4. On the other hand, learned counsel for the respondent/plaintiff contended that in order to settle the dispute once for all, the Advocate Commissioner may be given a direction to measure the lands in terms of their title deeds.

5. By virtue of the impugned order, an Advocate Commissioner was appointed to note down the physical features of plaint schedule property and other neighbouring features in the locality, and to measure the disputed path way site with the help of Mandal Surveyor as per the documents of both parties and to file a report with sketch. There cannot be any dispute that an Advocate Commissioner cannot be appointed to collect evidence. When there is a dispute with regard to the existence of path way, it has to be decided basing on the evidence adduced by both the parties. Therefore, the order of the trial Court is slightly modified to note down the physical features of the plaint schedule property and also the defendants' property with the help of Mandal Surveyor in terms of their title deeds, and file a report accordingly.

6. With the above modification, the Civil Revision Petition is disposed of. There shall be no order as to costs. Miscellaneous petitions pending, if any, in this Civil Revision Petition shall stand closed.

JUSTICE K.C.BHANU

Date: 27.2.2015
AMD

THE HON'BLE SRI JUSTICE K.C.BHANU

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DATE:27.02.2015

AMD