

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

**CIVIL REVISION PETITION No.571 of 2015**

**27.02.2015**

**Between:**

C.Vamshidhar Reddy

...Petitioner

And

P.Suryanarayanarao

...Respondent

Counsel for the petitioner: Sri G.Anandam

Counsel for respondent: --

**The Court made the following:**

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**ORDER:**

This civil revision petition arises out of the order, dated 18.12.2014, in I.A.No.1185 of 2014 in O.S.No.315 of 2010 on the file of learned Additional Junior Civil Judge, Malkajgiri, Ranga Reddy District.

I have heard Sri G.Anandam, learned counsel for the petitioner and perused the record.

The petitioner has filed the aforementioned suit for perpetual injunction simplicitor against the respondent in respect of plot bearing No.9, in survey No.8, admeasuring 253.00 sq.yds. situated at Kapra Village, Keesara Mandal, Ranga Reddy District. He has also filed the aforementioned I.A. under Order XVI Rule 9 C.P.C. for appointment of an Advocate Commissioner for noting down the physical features of the suit schedule properties at the spot. This application was dismissed by the lower Court by the order under revision. Feeling aggrieved thereby, the petitioner - plaintiff has filed this revision petition.

The lower Court has observed in its order passed dismissing the I.A. that the petitioner and the respondent are claiming the same property to be in their respective possession tracing their title from one and the same person, by name, Vishwanatham, and that therefore, the burden lies on the petitioner - plaintiff to prove his possession over the suit schedule property within the boundaries mentioned in the suit documents by leading oral and documentary evidence. It was further observed that there is no serious dispute regarding the physical features of the suit schedule property, which is an open plot and that appointment of an Advocate Commissioner even before commencement of trial amounts to collection of evidence, which is not permissible.

Learned counsel for the petitioner has not disputed that the suit

schedule property is an open plot and that both the parties have been making the claim over the same.

Ordinarily, in a suit for injunction simplicitor, an Advocate Commissioner is not appointed for the reason that the burden lies on the plaintiff to prove that he is in possession of the suit schedule property and he has to discharge his burden by adducing oral and documentary evidence. The pleadings of the parties reveal that the boundaries mentioned in the documents possessed by either party vary with each other. Thus, it is for the petitioner - plaintiff to prove that the suit schedule property as described in the sale deed relied upon by him is the one which is in his possession by adducing relevant evidence. On these facts, an Advocate Commissioner cannot be entrusted with the task of resolving the dispute as to which of the parties is in possession of the suit schedule property, lest such a course amounts to appointing an Advocate Commissioner to gather evidence.

For the aforementioned reasons, I do not find any reason to interfere with the order of the lower Court.

Accordingly, the Civil Revision Petition is dismissed.

As a sequel to dismissal of the Civil Revision Petition, C.R.P.M.P.No.740 of 2015 filed by the petitioner for interim relief also stands dismissed.

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**(C.V.NAGARJUNA REDDY, J)**

27<sup>th</sup> February, 2015  
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