

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**C.R.P.No.5554 of 2009**

**ORDER:**

Hears Sri A.Prabhakara Rao, learned counsel for the petitioners and Sri N.Pramod, learned counsel for 1<sup>st</sup> respondent.

2. This Revision Petition is filed challenging the order dt.10-09-2009 in I.A.No.1404 of 2006 in O.S.No.534 of 2006 of the II Additional Senior Civil Judge, Warangal.
3. The petitioners herein are defendant Nos.1 to 3 in the suit. 1<sup>st</sup> respondent filed the above suit against the petitioners for specific performance of an agreement of sale and for consequential perpetual injunction restraining the petitioners from interfering with his alleged peaceful possession and enjoyment of the plaint schedule property.
4. He filed I.A.No.1404 of 2006 under Order 26 Rule 9 CPC to appoint the Advocate Commissioner to note down the physical features of the suit schedule property. He contended that the petitioners had agreed to sell the plaint schedule property to him and had also delivered possession of the property to him, but they were trying to dispossess him and to dismantle of structure erected by him in the property.
5. Petitioners on the other hand opposed the said application and contended that the suit itself is not maintainable and there was no necessity to appoint Advocate Commissioner.
6. By order dt.10-09-2009, the Court below allowed the said application on the ground that the appointment of the Advocate Commissioner would be necessary to ascertain the point

whether there was any structure in the plaint schedule property or not.

7. It is the contention of the learned counsel for the petitioners that the relief in the suit being principally for specific performance of the suit agreement of sale, the appointment of the Advocate Commissioner would not aid the disposal of the suit. He further pointed out that I.A.No.1405 of 2006 filed by 1<sup>st</sup> respondent under Order 39 Rules 1 and 2 to restrain the petitioners from alienating the suit schedule property was dismissed on 20-08-2009 and I.A.No.1406 of 2006 also filed by 1<sup>st</sup> respondent under Order 39 Rules 1 and 2 to restrain the petitioners from interfering with his peaceful possession and enjoyment was dismissed on the same day.
8. Learned counsel for 1<sup>st</sup> respondent on the other hand contends that appointment of the Advocate Commissioner would not cause any prejudice to the petitioners. He does not dispute the fact that such appointment of Advocate Commissioner would not aid the Court in deciding the principal issue in the suit as to whether specific performance of the suit agreement of sale can be granted in favour of 1<sup>st</sup> respondent.
9. I am of the opinion that the suit being principally a suit for specific performance of the suit agreement of sale, the appointment of Advocate Commissioner would not in any way help the Court in deciding the principal issue whether relief of specific performance can be granted to 1<sup>st</sup> respondent or not.
10. Admittedly I.A.No.1406 of 2006 filed under Order 39 Rules 1 and 2 by 1<sup>st</sup> respondent to restrain the petitioners from

interfering with the alleged peaceful possession and enjoyment of the property has been dismissed on 20-08-2009.

11. Having regard to these reasons, I am of the opinion that the Court below erred in allowing I.A.No.1404 of 2006. Therefore, the said Order is set aside. Civil Revision Petition is allowed accordingly. No costs.

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

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 05-06-2015

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