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**CIVIL REVISION PETITION No.833 OF 2015**

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**ORDER :**

This Civil Revision Petition is filed challenging the order dt.22.12.2014 in I.A.No.54 of 2014 in O.S.No.294 of 2007 of the Principal Junior Civil Judge, Bhimavaram.

2. The petitioners herein are plaintiffs in the said suit. They filed the said suit alleging that the respondents have encroached an extent of Ac.0.05 ½ cents shown as 'ABCDEFGH' described as item No.2 in the plaint schedule and indicated in the plaint plan.
3. The respondents denied the same.
4. The petitioners, therefore, filed I.A.No.54 of 2014 under Order XXVI Rule 9 C.P.C. to appoint an advocate commissioner to measure the 'ABCDEFGH' marked portion in the plaint plan. In the affidavit filed in support of the said application, the petitioners contended that the appointment of advocate commissioner is necessary to determine whether there is an encroachment by the respondents or not.
5. Counter-affidavit was filed by respondent Nos.1 and 2 opposing this application reiterating the stand taken in the written statement and contending that 'ABCDEFGH' marked site in the

plaint plan belongs to respondent Nos.1 and 2 and does not belong to the petitioners. It is contended that appointing an advocate commissioner would amount to gathering of evidence and it is impermissible in law.

6. By order dt.22.12.2014 the Court below dismissed I.A.No.54 of 2014. It held that since the suit is filed for declaration of title and recovery of rents and although in the suit, there is a dispute with regard to item No.2 of plaintiff schedule, the advocate commissioner cannot be appointed since it would amount to collection of evidence, which is impermissible.

7. Challenging the same, this Revision is filed.

8. Learned counsel for the petitioners contended that the order passed by the Court below is vitiated by error in exercise of jurisdiction vested in it; no amount of oral evidence would be sufficient to prove whether there is encroachment or not by respondents of item No.2 of B-schedule, and that since the evidence is of peculiar nature and it is available only at the spot, the best way to place it before the Court, is through an advocate commissioner.

9. The learned counsel for the respondents reiterated the reasoning of the Court below.

10. I am of the opinion that in disputes of this nature, where evidence of the encroachment can only be obtained from the spot and since oral evidence alone would not be helpful to the Court to determine whether or not there is any encroachment by the respondents, appointment of advocate commissioner under Order XXVI Rule 9 of the Code is desirable and warranted. It cannot be said that such a course of action would result in enabling the petitioners to collect evidence. Similar view has been expressed by this Court in **Bandaru Mutyalu and another v. Palli Appalaraju**.

11. Therefore, the impugned order cannot be sustained. It is

accordingly set aside and Civil Revision Petition is allowed. Consequently, I.A.No.54 of 2014 in O.S.No.294 of 2007 on the file of the Principal Junior Civil Judge, Bhimavaram, is also allowed. No costs.

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

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 15-09-2015

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