

HON'BLE SRI JUSTICE S. RAVI KUMAR

CIVIL REVISION PETITION No.163 of 2014

ORDER:

This revision is filed against order dated 25.07.2013 in I.A.No.131 of 2013 in O.S.No.241 of 2011 on the file of Principal Junior Civil Judge, Palakol.

2. Revision petitioners herein are plaintiffs and they filed O.S.No.241 of 2011 for permanent injunction in respect of suit schedule property and respondents/defendants filed written statement making counter claim and also seeking relief of mandatory injunction contending that plaintiffs encroached into joint passage, and an advocate commissioner was appointed, who visited the suit site and filed his report and the warrant was re-entrusted to the commissioner twice and two separate reports are filed by advocate commissioner and objections to the commissioner report are filed by both parties. At this stage, plaintiffs filed the present I.A.No.131 of 2013 with a request to entrust the warrant to commissioner for measuring the land with the help of a qualified surveyor, and the trial Court dismissed the application holding that there are no valid grounds or bonafides for re-entrusting the commission warrant to measure the plaint schedule site and also site of third party adjacent to the plaint schedule site and joint

passage. Aggrieved by the same, present revision is preferred.

3. Heard arguments of both sides.

4. From the submissions, the main grievance of plaintiffs is that the commission petition was closed without properly considering the objections taken by plaintiff and that it will cause prejudice to plaintiff. But according to advocate for defendants, objections were considered and only after considering the objections, petition is closed.

5. Now without going into the correctness of the closure of commission petition, I feel that this revision can be disposed of with a direction to the trial Court to consider the objections of both sides filed to the commissioner's report at the time of disposal of suit with reference to the evidence produced on behalf of both parties while considering the plea of counter claim made by defendants in respect of joint passage. Sine the trial Court gave a finding that there is no tenable objection raised by either side to the commissioner's report, I feel that finding has to be set aside for reconsidering the commissioner's report with reference to the objections.

6. Accordingly by setting aside that part of finding in the impugned order dated 25.7.2013 in I.A.No.131 of 2013 in O.S.No.241 of 2011, this Civil Revision Petition is

disposed of with the above direction. No costs.

Miscellaneous petitions, if any pending, in this revision petition shall stand closed.

S. RAVI KUMAR, J

Date: 23-01-2015.

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HON'BLE SRI JUSTICE S. RAVI KUMAR

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CIVIL REVISION PETITION No.4119 of 2007

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Date: 19-01-2015

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