

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

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CIVIL REVISION PETITION No.1416 of 2015

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ORDER :

The petitioners are plaintiffs in O.S.No.16 of 2013 on the file of Junior Civil Judge at Narayanakhed, Medak District. They filed the suit for declaration of title in respect of 'B' schedule property, recovery of possession of the said 'B' schedule property after demolition of unauthorized constructions and for permanent injunction in respect of 'C' schedule property. After filing the written statement, I.A.No.45 of 2014 was filed by the plaintiffs seeking appointment of Advocate commissioner on the ground that only when a survey is made with the help of records of Gram Panchayat Narayankhed the encroachments made by the defendants would be known. The said application was resisted by the defendants stating that they have constructed house after obtaining due permission from the Gram Panchayat, Narayankhed and they have not encroached any portion of the land of the plaintiffs. The Trial Court dismissed the said application with the following observations :

"It is seen that original suit is filed for the relief of declaration, recovery of possession of 'B' Schedule property and also for removal of authorized constructions, and also for the relief of perpetual injunction. The main suit is posted for trial as issues were framed but so far trial is not commenced. The version of petitioners shows that the respondents are contending that in the year 1972 the respondents have taken that H.No.1-6-31 i.e., B Schedule property by the respondents and version of petitioner shows that the respondent have encroached the B Schedule property if official surveyed is made and if the advocate commissioner measures suit schedule properties i.e., 'A' to 'C', schedule property including house of defendants then the fact will com out.

On considering the total aspects I feel that the natural of relief sought under main suit is declaration, recovery of possession and perpetual injunction. In my view if at this stage the commissioner is appointed in my view it may lead to collection of evidence on behalf of petitioners herein and the same is not permitted under law. If the advocate commissioner appointed to measure 'A' to 'C' schedule properties including the house of defendants as now the encroachment know the encroachment made by defendants I feel that it will help the petitioners as evidence on behalf in my view it can not be done. On considering the total facts, I

am not inclined to allow the petition.”

(Reproduced as verbatim)

2. This Court carefully perused the copy of plaint filed along with the material papers in this case and noticed that the plaintiffs categorically stated that the defendants encroached Northern portion of the open place of plaintiff in House No.1-6-29 (old), 1-6-31 (new) admeasuring North to South 10.6 feet, East to West 26 feet total admeasuring 275.6 feet or 31 Square yards.

3. When the plaintiff has clearly mentioned with regard to encroachment there is no dispute with regard to the extent of encroachment so far as plaintiffs are concerned.

4. In the circumstances, this Court feels that the order passed by the trial Court is correct at the present stage of proceedings. After leading evidence, if the plaintiffs think it is necessary for appointment of Advocate Commissioner on the basis of such evidence, they may renew the application and the Court below shall consider the same in accordance with law.

5. Civil Revision Petition is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Revision shall stand dismissed.

_____**A. RAMALINGESWARA RAO, J**

22nd December, 2015

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DATED : 22.12.2015

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