

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

CIVIL REVISION PETITION No.392 of 2015

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ORDER:
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Heard Sri N.Aswartha Narayana, learned counsel for petitioner and Sri N.Chandra Sekhar, learned counsel for 1st respondent.

2. This Civil Revision Petition is filed challenging the order
dt.30-06-2014 in I.A.No.133 of 2014 in O.S.No.216 of 2009 of the
Junior Civil Judge, Gooty.

3. The petitioner herein is 4th plaintiff in the suit.

4. The plaintiffs filed the suit for a perpetual injunction restraining the respondents from interfering with their alleged peaceful possession and enjoyment of the plaint schedule property. They claimed the plaint schedule property of extent Ac.0.01 cent on the basis of purchase under a registered sale deed dt.10-02-2004 from their vendors. According to them, the plaintiffs obtained permission for setting up a weigh bridge by name Sri Lakshmi Venkateswara Weigh Bridge in the plaint

schedule property and the said weigh bridge exists therein.

5. The respondents filed a written statement disputing the possession of plaintiffs over the plaint schedule property.

6. Issues were framed on 27-07-2010 and evidence on the side of plaintiffs is being taken up by the Court below. The chief-examination affidavit of petitioner was filed on 21-03-2012 and matter was getting adjourned from time to time at the instance of petitioner and other plaintiffs.

7. Ultimately, on 29-04-2014, the petitioner filed I.A.No.133 of 2014 under Order XXVI Rule 9 CPC to appoint an Advocate-Commissioner to note down the physical features and in particular the weigh bridge erected by him in the plaint schedule property and also other features existing at the time of inspection of the Advocate-Commissioner.

8. This application was opposed by respondents contending that certain documents in respect of the existence of weigh bridge have already been filed by petitioner and if the Advocate-Commissioner is allowed to be appointed to submit his report about the physical features in the property, it would amount to gathering

evidence for the benefit of petitioner, which is impermissible.

9. By order dt.30-06-2014, the Court below dismissed the said I.A. holding that if Advocate-Commissioner is appointed to ascertain the physical features including the existence of the weigh bridge, it would amount to collecting evidence for the benefit of petitioner. It relied upon the decision of the Supreme Court in **Aredla Ram Reddy and others Vs. Arredla Alivelamma**^[1]. In the said judgment, this Court held:

“Depending on the necessity in a suit, commissioners can be appointed, even to note down the physical features. This, however, would depend on the nature of relief claimed in the suit. When the physical features of the suit schedule are of hardly of any relevance, in a suit for permanent injunction, the necessity to appoint a commissioner does not arise. The resultant report is prone to be used as a material, to support the plea of possession etc. Such a course of action is impermissible in law.”

10. I am of the opinion that the principle laid down in the said case applies on all fours to the present one. The purpose of the petitioner seeking appointment of Advocate-Commissioner in this case is primarily to establish his possession by getting Advocate-Commissioner to report on the existence of the weigh bridge in the plaint schedule property. Therefore, I am of the view that the Court below had rightly dismissed

I.A.No.133 of 2014 and there is no error of jurisdiction in the order passed by it.

11. Therefore, the Civil Revision Petition is dismissed.
No costs.

12. As a sequel, miscellaneous petitions pending if any, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 15-07-2015

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[\[1\]](#) 2004(5) ALD 388