

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 3310 of 2014

DATED 6th FEBRUARY, 2015.

BETWEEEN

Pepetla Shyamsunder Reddy

...Petitioner

And

Anthati Yellaiah and ors

...Respondents.

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 3310 of 2014

ORDER:

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Heard learned Counsel for the petitioner and learned Counsel for respondents 1 and 2.

This Civil Revision Petition is directed against the order dated 11.07.2014 passed in I.A.No.17 of 2013 in O.S.No.63 of 2008 dismissing the application filed by the petitioner for appointment of an Advocate Commissioner. The petitioner herein is the plaintiff in the aforesaid suit, which is filed seeking perpetual injunction in respect of 82 square yards of land within the specific boundaries in Sy.No.195 of Pillalamarry village, Suryapet Mandal, Nalgonda District. It appears that in the said suit, P.W.1 was examined and his evidence was completed. At that stage, the petitioner filed the present application for

appointment of Advocate Commissioner since there was a dispute with regard to the boundaries of the suit land. The learned Counsel for the petitioner submits that though the petitioner relied on the judgment of this Court in the case of *Donadulu Uma Devi Vs. Girika Katamaiah @ Basaiah* {2013(4) ALT 548}, the lower Court dismissed the application on the ground that in the reported judgment there was no claim over the schedule property and there was only identity dispute. In paragraph 8 of the order under revision, the Court below held that both parties are claiming ownership over the suit schedule property, which is not correct. The petitioner, who is plaintiff in the aforesaid suit is claiming ownership over the land to an extent of 82 square yards comprised in Sy.No.195 of Pillalamarry village whereas respondents/defendants 1 and 2 are claiming ownership over the land in an extent of Ac.2.07 guntas in Sy.Nos.196 and 199 of Pillalamarry village. Thus the claim of the petitioner and of Respondents 1 and 2 is exclusive, but the property of the respondents 1 and 2 is situated adjacent to the property of the petitioner. In these circumstances only, the application was filed by the petitioner for appointment of Advocate Commissioner. But the lower Court misconstrued the facts in the case and dismissed the application.

Though the application of the petitioner is not properly worded, but for the relief sought for, the lower Court should have confined the relief to the extent of property belonging to the petitioner. When this was put to the learned Counsel for respondents 1 and 2, he has no objection for the same.

In the circumstances, the Civil Revision Petition is

allowed and the order dated 11.07.2014 passed by the learned Junior Civil Judge, Suryapet, Nalgonda District in I.A.No.17 of 2013 in O.S.No.63 of 2008 is set aside. Consequently, the matter is remanded to the Court below for passing appropriate orders in the light of the observations made in this order.

The Civil Revision Petition is allowed. Miscellaneous petitions pending consideration if any in the CRP shall stand closed in consequence. No order as to costs.

JUSTICE A. RAMALINGESWARA RAO

DATED 6TH FEBRUARY, 2015.

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