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THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

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CRP No.2350 of 2016

ORDER ::

Plaintiffs in the suit OS No.88 of 2014 filed this revision against the order dated 29-01-2016 passed in IA No.491 of 2014 by the Ill Addl. District Judge, Karimnagar, dismissing the said IA filed under Order 26, Rule 9 CPC for appointment of Advocate Commissioner for fixing boundaries and demarcation of the suit property.

2. Learned counsel for the plaintiffs-petitioners strenuously contended that the IA was dismissed only on the grounds that allowing the petition would amount to collection of evidence and the petition is filed at pre-trial stage. Learned counsel states that none of the contentions urged were adverted to by the Court below. According to learned counsel whether it is pre-trial or post-trial stage, the petition ought to have been considered on merits and rendered a decision. Though various contentious issues were raised including citing decision of this Court reported in 2010 (4) ALD 198 the same was not considered.

3. On the other hand, learned counsel for the respondents made submission in support of the impugned order and stated that one of the prayer in the suit claim itself is for appointment of

Commissioner to demarcate the suit property and if this petition is allowed, it amounts to allowing the suit in part before the plaintiffs being put to trial. Learned counsel also contends that the plaintiffs-petitioners all through suffered injunction against them in the suits filed by the defendants-respondents and the injunction granted in their favour was confirmed by the High Court in appeal CMA filed by the petitioners and having failed to get orders in their favour, the plaintiffs-petitioners have filed the present suit.

4. Having heard learned counsel for the parties and having perused the impugned order, this Court finds that the impugned order does not disclose any reasons for dismissal of the petition. Though facts were noted elaborately, there is no adjudication of the contentions raised. The Court below proceeded on the ground that the suit was filed for simple injunction, when it is not so, and the suit is for declaration of title and for consequential perpetual injunction and also for appointment of Commissioner. It is true that one of the relief prayed in the suit is for appointment of Commissioner for demarcation of the suit property. Whether the appointment of Commissioner is necessary, having regard to the facts and circumstances of the case, is not discernible from the order of the Court below. Therefore, the impugned order is set aside and the matter is remanded for consideration afresh after

hearing the parties and to pass appropriate orders thereon in accordance with law. With the above directions, the civil revision petition is disposed of. Miscellaneous petitions, if any pending in this case shall stand closed. There shall be no order as to costs.

A. RAJASHEKER REDDY, J

Dated: 29-07-2016
NRG

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