

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No.1971 OF 2016

DATED 1st JULY, 2016

BETWEEN

Earla Guravamma and ors

....Petitioners

And

Mulu Obulareddy

..Respondent.

HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO

CIVIL REVISION PETITION No.1971 OF 2016

ORDER:

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The petitioners herein are the defendants in the suit O.S.No.86 of 2015 on the file of the learned Junior Civil Judge, Podili, Prakasam District. The said suit was filed by the respondent herein seeking permanent injunction in respect of the suit schedule property to an extent of Ac.10.70 cents within specific boundaries. The respondent/plaintiff filed IA.No.146 of

2015 for grant of ad interim injunction and when the said application is pending consideration, the petitioners filed I.A.No.466 of 2015 for appointment of an Advocate Commissioner. In the affidavit filed in support of the application, though averments ran into three pages, no single reason was shown for appointment of Advocate Commissioner, except stating that boundaries are not correctly mentioned in the schedule of property. The respondent herein filed counter affidavit stating that the application was filed for collection of evidence. The Trial Court dismissed the said application by observing that the petitioners filed suit for declaration and consequential injunction on the file of the learned Senior Civil Judge, Darsi, however, particulars of the said suit are not furnished and that the present suit is at the stage of hearing of the interlocutory application in I.A.No.146 of 2015 for grant of ad interim injunction. It ultimately dismissed the application with the following observations:

“ At this stage both the parties have to establish their case by way of placing evidence before this Court and appointment of Advocate Commissioner to note down the physical features or to collect the evidence at this stage is not permissible, during the trial if the Court feels that if there is any ambiguity with regard to the identification of plaint schedule property then inspection of the property by way of appointing Advocate Commissioner is permissible. On one hand the petitioners are contending that there were no existing boundaries to the plaint schedule property and that the plaint schedule property is in Ac.10.70 cents, on the other hand the petitioners are asking the court to appoint Advocate Commissioner to inspect the Plaint Schedule Property to note down the existing trees, bushes, shrubs

etc., merged in the entire survey number. At the stage of hearing the Interlocutory Application appointment of Advocate Commissioner is nothing but collection of evidence and that this Court is of opinion that there are no valid and considerable grounds to appoint an Advocate Commissioner as there is no uncertainty which has to be decided by this Court at this stage. In view of the discussion supra, the petition is liable to be dismissed.”

The learned Counsel for the petitioners admitted that some of the petitioners herein filed a suit for declaration of title and consequential injunction, but they did not get any injunction in the said suit. When the respondent herein who is plaintiff in the suit in OS.No.86 of 2015 filed I.A.No.146 of 2015 for ad interim injunction, the petitioners herein filed the present application even before deciding the application for ad interim injunction. In the affidavit filed in support of the application, the petitioners have not stated any averment justifying the appointment of Advocate Commissioner. In the circumstances, this Court finds no valid reason to interfere with the order under revision passed by the Court below.

The Civil Petition is accordingly dismissed. However, this order will not prevent the petitioners to renew their request for appointment of Advocate Commissioner at an appropriate stage of suit.

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

JUSTICE A.RAMALINGESWARA RAO

DATED 1st JULY, 2016.

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