

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.4141 OF 2015

ORDER:

The petitioners are defendant Nos.1, 3, 4 and 5 in O.S.No.36 of 2013 on the file of the Senior Civil Judge, Bodhan, Nizamabad District. The respondent herein filed the said suit for perpetual injunction in respect of Ac.0.04 ¼ guntas of land in Survey No.879/A1 comprising of an open plot with specific boundaries. The defendants herein filed written statement in the suit. The plaintiff herein filed I.A.No.136 of 2013 for ad-interim injunction and that application was dismissed earlier. After dismissal of the said application, the defendants herein filed an application in I.A.No.276 of 2015 for appointment of an Advocate Commissioner on the ground that the Court has got power to localize the property with the help of a Mandal Surveyor.

2. A perusal of the written statement filed by the defendants herein clearly shows that they are disputing the existence of the property as mentioned in the plaint. In the circumstances, it is for the plaintiff to prove his case and for mere asking of the defendants, no Advocate Commissioner can be appointed.

3. The trial Court dismissed the application with the following observations:-

"In view of the decision relied by the counsel for respondent given in Sajidunnisa vs. Shukur Ali, I am of the view that no Advocate Commissioner can be appointed for localizing the property covered by the

two sale deeds. At the cost of repetition the court wants to say that as it is the respondent who filed the suit seeking for permanent injunction, it is his burden to prove the case by adducing convincing and cogent oral and documentary evidence, and it is not the burden of the petitioners who are defendants to disprove the case of the respondent/plaintiff.

In view of the foregoing discussion, I am of the view that there are no any merits in this petition.”

4. This Court sees that the reasoning given by the trial Court is coherent and it does not warrant any interference.

5. Accordingly, the Civil Revision Petition is dismissed. However, this order will not prevent the trial Court from appointing an Advocate Commissioner at a later point of time in case of any dispute with regard to the identity of the property or if it feels justified. There shall be no order as to costs.

6. Miscellaneous Petitions pending, if any, in this Civil Revision Petition shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

Date: 12.2.2016

AMD

-

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

-
-
-
-
-
-
-

-
-
-
-
-
-
-
-
-
-

-
-
-

CIVIL REVISION PETITION No.4141 OF 2015

-

DATE: 12.2.2016

AMD