

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No. 4978 of 2014

ORDER:

The petitioners are the plaintiffs in O.S.No.101 of 1995 on the file of XI Junior Civil Judge, City Civil Court, Secunderabad. The said suit was filed for permanent injunction. The said suit was initially decreed in favour of the plaintiffs. When the matter was taken to appeal in A.S.No.08 of 2002, the appeal was allowed by setting aside the decree and judgment in O.S.No.101 of 1995, dt. 04.06.2001 and remanded the matter for receiving the documents, subject to relevancy and admissibility and to adduce any further evidence and to dispose of the suit afresh. After taking up the matter after remand, when the case was pending, the petitioners filed I.A.No.804 of 2014 for appointment of an advocate commissioner. The said application was dismissed by the trial Court stating as follows:

“ It is settled law that in a suit for bare injunction, commissioner cannot be appointed for collecting evidence. In this case, petitioners seek appointment of advocate-commissioner to note the house numbers of houses surrounding the suit property. In other words, petitioners want the advocate-commissioner to ascertain some of the boundaries of the suit property. In my view, the same would amount to collecting the evidence. Furthermore, the purpose for which the matter is remanded to this Court is only to enable the parties to adduce additional evidence. In my view, this petition, if allowed, would amount to traveling beyond the purpose for which the matter is remanded to this Court. I am of the view that this Court has no power to appoint advocate commissioner at this stage of the proceedings. Hence, I am not inclined to allow the petition. In the result, petition is dismissed. No costs”.

In a suit for permanent injunction, it is for the petitioners to adduce necessary evidence. But such an application of this nature i.e., I.A No.804 of 2014 cannot be allowed as it is not intended for noting down the physical features of the suit schedule property, but for covering the

evidence of the neighbouring houses.

In the circumstances, this Court feels that the Order dt.10.10.2014, passed by the trial Court, is correct and it does not warrants any interference by this Court.

Accordingly, this Civil Revision Petition is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this Civil Revision Petition, shall stand closed.

A.RAMALINGESWARA RAO, J

Date: 08.02.2016

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