

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.No.3326 of 2016

ORDER:

1. The petitioners are defendants in O.S.No.73 of 2015 on the file of the Junior Civil Judge, Podili. The said suit was filed for permanent injunction in respect of an extent of Ac.9.85 cents within the specified boundaries. The defendants filed a written statement denying the plaint averments and stated that there was a Field Measurement Book plan showing cart track in the middle of the plaint scheduled land leading towards their land and to Pamulapadu village. The said cart track is being used by all the villagers including the defendants. In order to establish that fact, the defendants filed I.A.No.419 of 2015 seeking appointment of an advocate commissioner. The said application was dismissed by the trial Court by order dated 03.02.2016 stating that as seen from the contents of the affidavit filed on behalf of the petitioners, the petitioners' contention stand on a different footing and the petitioners want the plaint scheduled property along with the defendants land shall be inspected and the existing cart track has to be noted along with the physical features. The said prayer is a collection of evidence by the Court. The trial Court further observed that the petition for appointment of an advocate commissioner would be considered if there is any ambiguity for disposal of the matter. Since there is no uncertainty, the trial Court held that there

is no need to appoint an advocate commissioner. Challenging the said order, the present Civil Revision Petition is filed.

2. Learned Counsel for the petitioners submits that the existence of the cart track has to be established by the defendants in view of the averment made in the written statement and the dismissal of the application filed by the defendants is erroneous.

3. The plaintiff filed the suit for permanent injunction in respect of the property owned by him. If there is any grievance to the defendants with regard to the said injunction sought by the plaintiff, the defendants are at liberty to take appropriate pleas. But, in the guise of taking the pleas, they cannot establish a new fact, which is not pleaded by the plaintiff. If the defendants want a finding with regard to the fact not connected with the suit, it is open to them to take appropriate proceedings, but not by way of the present application seeking appointment of an advocate commissioner. The dismissal of the application by the trial Court does not warrant any interference by this Court.

4. The Civil Revision Petition is accordingly dismissed. No order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J