

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION No.4006 of 2016

ORDER:

This civil revision petition is filed by the petitioners under Article 227 of the Constitution of India aggrieved by the order, dated 14.07.2016, passed by the IV Additional District Judge, Kakinada, passed in I.A.No.601 of 2016 in O.S.No.95 of 2012.

Heard and perused the material available on record.

The petitioners filed the I.A.No.601 of 2016 in O.S.No.95 of 2012 praying the Court to appoint a Commissioner to measure the properties as per the documents and also as per the plan which is marked as Ex.A-4, wherein the learned IV Additional District Judge, Kakinada, dismissed the said I.A. by observing as follows:

“9. The learned counsel for the respondents/defendants relied on a decision reported in **2009 (2) ALD 238** in between *G. Nagabhushanam Vs. T. Eswaramma* in which it was observed at paras 8 and 9 that the burden to prove the title and possession is squarely fell on the petitioner who claimed the title and possession and the appointment of the commissioner to prove the possession of either party is not permissible in suits for injunction or declaration.

The above said decision is squarely applies to the present case on hand as the main suit is filed for declaration of their title and possession by the petitioners/plaintiffs and it is for the petitioners to prove their title over the plaint schedule property through oral and documentary evidence. Therefore, the advocate commissioner need not be appointed at this belated stage. Hence, I find no merits in the present petition at this stage. Accordingly, the point is answered.”

As rightly observed by the learned trial Judge, this Court is also of the view that the appointment of the commissioner at the

belated stage i.e., when the suit is posted for arguments, is totally unwarranted.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this civil revision petition shall stand closed.

RAJA ELANGO,J

Date: 25th January, 2017

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