

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.151 of 2017

ORDER :

Heard learned counsel for the petitioners/defendants, learned counsel for the respondent/plaintiff and perused the impugned order of the II Additional Junior Civil Judge, Warangal, dated 02.12.2016, allowing the application in I.A.No.497 of 2016, in the pending suit for permanent injunction in O.S.No.1321 of 2011, for appointment of an Advocate Commissioner for local inspection to note down the physical features of the suit schedule property and surrounding features, walls dividing the property of the plaintiff and the defendants and to cover the same by photographs and the said application is allowed as prayed for supra.

2. It is the main contention of the learned counsel for the petitioners/defendants that no Advocate Commissioner appointment sought before the commencement of trial, much less along with the suit before filing of the pleadings of the defendants and it is filed only while evidence of plaintiff is in progress i.e., after cross-examination of PW.1, and the lower Court as fatal as anything passed the order not only for noting the physical features of the suit property, but also the surrounding features with no limit, but for if at all to note down the wall dividing the property of the plaintiff and defendants and the order is unsustainable.

3. Undisputedly, before commencement of trial the application is filed though there is no set of rules or settled law as and when

Advocate Commissioner be appointed and the main purpose contemplated for appointment of Advocate Commissioner under Order XXVI Rule 9 read with Section 75 C.P.C is for the purpose of elucidating any matter in controversy and here controversy is whether wall existing is the boundary wall or not? and whether the defendants got access from the plaint schedule property towards East or North, as the case may be?

4. Once such is the case, warrant clearly speaks not only to note down the physical features but also surroundings of the plaint schedule property. Accordingly, the plaintiff can give work memo in the application appointing the Advocate Commissioner besides another work memo to be given by the defendants and the Commissioner shall execute the warrant after completion of the oral evidence of the plaintiff which is in progress and the Commissioner shall also answer the work memos.

5. Accordingly, the civil revision petition is disposed of for nothing to interfere with the impugned order.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

Dr. B. SIVA SANKARA RAO, J

31st October 2017.

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