

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CIVIL REVISION PETITION No.2083 OF 2017

ORDER:

1. This revision petition is filed by the petitioner-plaintiff challenging the order dated 23.3.2017 passed in I.A.No.162 of 2017 in O.S.No.245 of 2009 by the Principal Junior Civil Judge, Peddapuram, East Godavari District.

2. The petitioner-plaintiff filed the suit in O.S.No.245 of 2009 before the trial Court for grant of permanent injunction restraining the respondents-defendants from causing obstruction to the petitioner-plaintiff through blue marked portion shown in the plaint schedule sketch. While the suit was coming up for further evidence of respondents-defendants, the petitioner-plaintiff filed the impugned application viz., I.A.No.162 of 2017 seeking to appoint an advocate Commissioner for noting down the physical features along with the ways to the plaint schedule property. The said application was dismissed. Aggrieved by the same, the petitioner-plaintiff filed this revision.

3. Heard and perused the material available on record.

4. It is the case of the petitioner-plaintiff that he has got openings towards east and north-east corner of his property, and his predecessors-in- title also got right of way through the disputed way situated on the north-east corner of the plaint schedule property and that the said disputed way is a joint way for the petitioner-plaintiff and others for ingress and egress to reach their respective properties. But D.W.1 in his evidence denied the right of way of the petitioner-plaintiff through the north-east corner and therefore, the commissioner's appointment is necessary to

adjudicate the issue of right of way of the petitioner-plaintiff in the disputed way. But the trial Court dismissed the impugned application on the ground that the topography of the disputed path way is not disputed by the respondents-defendants. Further, it is the case of the petitioner-plaintiff that there are disputes with regard to the usage of path way and therefore, the appointment of advocate commissioner is necessary in this matter.

5. The present application for appointment of Commissioner was filed while the suit was coming up for further evidence of the respondents-defendants and thereafter, the entire evidence was completed. The order under challenge discloses that there is no dispute with regard to the existence of disputed path way on the north-east corner of the plaint schedule property. The topography of the disputed path way is not disputed by the respondents-defendants including the existence of gate way. Considering all the facts, the trial Court came to the conclusion that the appointment of advocate commissioner would not help in any way to decide the issue involved in the suit.

6. Further, the suit is filed for injunction simplicitor. The trial Court observed in the order impugned that only issue to be decided in the suit is as to whether the petitioner-plaintiff is having any right of way in the blue marked portion of the plaint schedule sketch. In this regard, the evidence on either side was admittedly completed. During the course of the order impugned, it is observed that the topography of the property and the disputed path way, remained disputed. Considering the observations made by the trial Court and the nature and the stage of the suit, this Court is of the view that the order under challenge does not suffer from any

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illegality or irregularity warranting interference by this Court and hence,
the revision is liable to be dismissed.

7. Accordingly, the Civil Revision Petition is dismissed. No costs.
Consequently, miscellaneous petitions pending, if any, shall stand
dismissed.

JUSTICE RAJA ELANGO

Date : 11.09.2017

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DATED 11.9.2017

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