

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

C.R.P.No.3910 of 2016

ORDER

This Civil Revision Petition is directed against the order dated 07.06.2016 passed in I.A.No.130 of 2015 in O.S.No.66 of 2015 by the I Additional Junior Civil Judge, Ongole.

The petitioner is the plaintiff. He filed the said suit for permanent injunction against the defendants. He also filed I.A.No.130 of 2015 for appointment of an Advocate-Commissioner to visit the disputed suit schedule property and note down its physical features. When the said application was dismissed *vide* order dated 7.6.2016, the present civil revision petition is filed.

It is stated in the affidavit filed in support of the application of the petitioner before the Court below that he is in occupation of the suit schedule property and in view of the interference by respondents-defendants 4 and 5, he filed the said suit. It is further stated that the 5th defendant is proclaiming that the suit schedule property belongs to his mother-in-law.

A counter-affidavit is filed by the respondents denying the said averments, stating that the 5th defendant is son-in-law of the 4th defendant and 4th defendant is the original owner of

the suit schedule property. The petitioner is not paying any rent to the 4th defendant. Ultimately, it is stated that the petitioner is not entitled to the relief of appointment of Advocate-Commissioner to collect the evidence.

In the instant case, the application was filed only to note down the physical features of the property and submit a report. The application was dismissed on the ground that the petitioner failed to prove his possession over the suit schedule property on the date of filing of the suit.

The Court below should have confined its observations to the consideration of the application filed by the petitioner and should not have made observations with regard to the maintainability of the application in relation to the relief sought for in the main suit. Since the present application is filed only to note down the physical features of the suit schedule property, no prejudice is caused to the respondents and it does not amount to collection of evidence.

In the circumstances, the impugned order dated 7.6.2016 is set aside, I.A.No.130 of 2015 is allowed and the matter is remanded to the Court below for appointment of an Advocate-Commissioner for the purpose mentioned in the

petition.

Accordingly, the Civil Revision Petition is allowed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

3rd February, 2017

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