

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CIVIL REVISION PETITION No.5395 of 2017

ORDER:

Heard learned counsel for petitioners.

2. The Civil Revision Petition is disposed of at the admission stage, as this Court found no expediency in ordering notice.

3. This Civil Revision Petition has been filed against the order in I.A.No. 1121 of 2017 in O.S.No. 101 of 2013 on the file of III Additional Junior Civil Judge, Kadapa, whereunder the Court dismissed the petition filed by the petitioners/plaintiffs under Order 26 Rule 9 read with 151 CPC, to appoint an advocate commissioner to visit the suit locality and to note down the "J K L M" rasta which is mentioned in Ex. A3 plaint plan and other existing physical features in the interest of justice.

4. The main reason for seeking appointment of commissioner as per the pleadings of the petitioners before the trial Court is that the respondents/defendants have filed a plan, which does not match with the existing features on the ground and thereby, a confusion had arisen in respect of the plaint schedule property. The respondents/defendants opposed the petition on the ground that the petitioners/plaintiffs have filed the suit for perpetual injunction in respect of two items of the

property, item one is thatched hut and item two is a site and nowhere the plaintiffs claimed rasta, and therefore, the plaintiffs have to prove their lawful possession over the suit property from the date of filing the suit and in that view there is no dispute with regard to the identity of the property and appointment of the commissioner would amount to collection of evidence and nothing more.

5. Having been satisfied with the contention of the respondents and also finding that in this case the evidence was adduced by both the parties and the matter was coming up for arguments and at that stage there was no reason to appoint the advocate commissioner, the trial Court dismissed the petition.

6. A perusal of the impugned order does not show any perversity or jurisdictional error to consider the CRP. As already pointed out by the trial Court, the trial went on and the matter was coming up for arguments and till that stage nobody had complained about the dispute in identity of the property, which in fact, was not there. In that view of the matter, no ideal purpose would be served in appointing an advocate commissioner, as rightly observed by the trial Court. Having found no reasons to interfere with the orders of the Court below, the Civil Revision Petition is

dismissed at the admission stage. No costs. As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 23.10.2017
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