THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

C.R.P.No.5390 of 2018

ORDER:

This revision petition is filed under Article 227 of the Constitution of India assailing the order dated 06.08.2018 passed in I.A.No.133 of 2018 in O.S.No.17 of 2008 on the file of Junior Civil Judge Court at Alur, Kurnool District.

2. In spite of service of notice, the respondent did not choose to appear and oppose the petition. Hence, this Court is inclined to pass orders on merits. Heard the learned counsel appearing for the petitioners and perused the material on record.

3. The point that arises for consideration is:

"Whether there is any illegality, irregularity or impropriety in the impugned order?"

4. A perusal of the record reveals that the petitioners filed O.S.No.17 of 2008 on the file of Junior Civil Judge Court, at Alur, Kurnool District, against the respondent for perpetual injunction and mandatory injunction. During pendency of the suit, the petitioners filed I.A.No.133 of 2018 under Order XXVI Rule 9 Section 151 CPC seeking appointment of advocate commissioner. The respondent filed counter opposing the claim of the petitioners. The trial Court after affording a reasonable opportunity to both parties, dismissed the petition. Hence, the revision.

5. It is the case of the petitioners that they are having a land in Survey No.309/1 of an extent of Ac.04.16 cents of Ramadurgam village. The respondent is the neighbouring owner of the petitioners. It is the case of the petitioners that the respondent dug a well in their

land in contravention of the provisions of A.P. Water, Land and Trees Act, 2002. The trial Court dismissed the petition on the sole ground that the petitioners admitted that the respondent dug the bore well in Sy.No.309/1. The controversy involved is whether the respondent dug the well in violation of the A.P.Water, Land and Trees Act, or not. In order to resolve the issue involved in the suit, measurement of distance between two wells is inevitable. The trial Court without answering that aspect, dismissed the petition filed by the petitioners for appointment of advocate commissioner. The trial Court proceeded on a wrong premise and dismissed the petition on untenable grounds. Taking into consideration the facts and circumstances of the case, this Court is of a considered view that it is a fit case to remand the matter.

6. In the result, the Civil Revision Petition is allowed setting aside the order dated 06.08.2018 passed in I.A.No.133 of 2018 in O.S.No.17 of 2008. Consequently, I.A.No.133 of 2018 in O.S.No.17 of 2008 on the file of the Junior Civil Judge Court at Alur, Kurnool District, is remanded. The trial Court is hereby directed to dispose of the petition afresh after taking into consideration the points raised by the petitioners. There is no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

T.SUNIL CHOWDARY, J

Dt:14.12.2018
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