

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No. 6946 of 2018

ORDER:

This Civil Revision Petition is filed against order, dated 29.08.2018 passed by the learned Junior Civil Judge, Yemmiganur, in I.A.No.26 of 2017 in O.S.No.35 of 2017.

Petitioners herein filed the aforesaid suit against the respondent seeking permanent injunction, on the ground that the respondent/defendant is preventing them from using the cart track. Thereafter, they filed aforesaid I.A. seeking appointment of Advocate Commissioner to note down the existence of the cart track and pathway, passing through the southern edge of the respondent's land in Survey No.291A, shown in the plaint plan, and to file his report.

A perusal of the impugned order discloses that the learned Judge having taken into consideration the respective pleadings and having considered the nature of the suit claim opined that by seeking appointment of Advocate Commissioner, the petitioners/plaintiffs are trying to collect evidence and thereby, passed the impugned order rejecting such relief.

From a perusal of the copy of the plaint filed along with the present Civil Revision Petition, it is clear that the

petitioners/plaintiffs prayed for bare injunction but not declaratory relief. It is also evident that initially, they prepared the plaint seeking declaration of their easementary right over the cart track (from 'B' to 'C' cart track rasta in the plaint plan) but, later, they seem to have given up the same.

It is to be noted that as it is the specific plea of the respondent/defendant in the written statement that there exists alternative rasta, which is being used by the petitioners/plaintiffs from time immemorial, the respective parties are required to establish their case by adducing their independent evidence. In view of the same, appointment of Advocate Commissioner would no way help in resolving the dispute between the parties.

In those circumstances, the impugned order cannot be found fault with.

Accordingly, this Civil Revision Petition being no merit is dismissed.

Miscellaneous Petitions, if any pending, shall stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

28th NOVEMBER, 2018.

kvni