

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition No.1911 of 2019

ORDER :

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.19.07.2019 passed in Interlocutory Application No.778 of 2019 in Original Suit No.69 of 2013 on the file of the Principal Junior Civil Judge, Medchal, at Ranga Reddy District.

2. The petitioners herein are plaintiffs in the above suit.
3. They filed the said suit for declaration of title and perpetual injunction in respect of the suit schedule property admeasuring Acs.1.10 guntas including 30 feet wide road providing them access to Foxsagar Lake to Medchal-Shapurnagar Road.
4. After the evidence of both parties was completed, and the matter is posted for arguments, the petitioner filed Interlocutory Application No.728 of 2019 under Order 26 Rule 9 of Civil Procedure Code, 1908 to appoint an Advocate-Commissioner to note down the physical features of the property. It was specifically alleged in the said application that the 30 feet wide road is part of the property of the petitioner, though it is not recorded in any Revenue Record; and the respondent is taking undue advantage of the said road and using it to dump granite stones by removing the fencing.

5. Counter-affidavit was filed by respondent opposing this application, stating that the application is highly belated and the only intention of petitioners is to drag on the matter.

6. By order dt.19.07.2019, the Court below dismissed the said application observing that since petitioners' case itself is that the 30 feet wide road is part and parcel of their property, there is no necessity to appoint an Advocate-Commissioner to note down about the said road particularly when there are no records available about its existence even according to petitioners. It further observed that petitioners have to first establish title over the property claimed by them, and no useful purpose would be served by appointing an Advocate-Commissioner when the trial is completed and the matter is posted for arguments.

7. Assailing the same, the present Civil Revision Petition is filed.

8. Though the counsel for petitioners contended that prejudice would be caused to petitioners if the Advocate-Commissioner is not appointed and physical features are not noted, since admittedly the plea of petitioner is that the alleged 30 feet wide road forms part of their property, petitioners need to establish their title to the property first. It is not the case of petitioners that they are seeking any easementary right over the property belonging to somebody else or, in any event, over property which is not belonging to them.

9. I therefore do not find any merit in the Civil Revision Petition and it is accordingly dismissed. No order as to costs.

10. As a sequel, miscellaneous petitions pending if any in this Civil Revision Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19.08.2019

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