IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

MONDAY ,THE TWENTY THIRD DAY OF DECEMBER TWO THOUSAND AND TWENTY FOUR

PRESENT
THE HON'BLE SMT JUSTICE K. SUJANA

CIVIL REVISION PETITION NO: 3169 OF 2023

Petition Under Article 227 of the Constitution of India against the order dated 21-02-2023 in I.A.No. 1 of 2022 in O.S.No. 381 of 2016 on the file of the Court of the Principal Senior Civil Jude at Khammam.

Between:

1. Gariganti Leela Rani,. W/o Rajaiah, Aged 50 years, occ. Household, R/o H.No. 5-5-217/ 1, Parsibandham Area, Khammam TownandDistrict.
2. Gariganti Umesh, S/o Rajaiah, Aged 32 years, occ. Private Employee, R/o H.No. 5-5-217/1, Parsibandham Area, Khammam Townand District.

...PETITIONERS/ Plaintiff

AND

1. Chityala Praveen, S/o Late NageswaraRao, Aged 31 years, occ. Private Employee, R/o Pakabanda Bazar, NearAkshara School, Khammam Town and District.
2. Chityala Sravani, D/o Late NageswaraRao, . Aged 33 years, occ. Private Employee, R/o Pakabanda Bazar, NearAkshara School, Khammam Town and District.
3. Chityala Bhavani, D/o Late NageswaraRao, Aged 33 years, occ. Private Employee, R/o Pakabanda Bazar, NearAkshara. School, Khammam Town and District.
4. Bandari Usharani, W/o Philip Sarangaphani, Aged 37 years, occ. Household, R/o Ramnagar, Hanamkonda, Warangal District.

...RESPONDENTS/ Defendants

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in OS NO.381 OF 2016 on the file of Honorable Senior Civil Judge Court at Khammam, pending disposal of the main Civil Revision Petition, in the interest of justice.

Counsel for the Petitioner: SRI. P. RAMA SHARANA SHARMA

Counsel for the Respondents: NONE APPEARED

The Court made the following ORDER:

THE HON'BLE SMT JUSTICE K.SUJANA

CIVIL REVISION PETITION No.3169 OF 2023

O R D E R:

This Civil Revision Petition is filed by defendants against the order dated 21.02.2023 in I.A.No.1 of 2022 in O.S.No.381 of 2016 on the file of the Principal Senior Civil Judge at Khammam.

2. For the sake of convenience, hereinafter, the parties will be referred as per their array before the trial Court

3. The facts of the case are that the plaintiffs/respondents filed the suit against the defendants for declaration and perpetual injunction in respect of the suit schedule property i.e., house plot admeasuring 117.00 square yards, survey No.172 of Pakabanda area, Khammam Town and District. It is stated that the mother of the plaintiffs purchased the suit schedule property through registered sale deed bearing document No.2924 of 1983 dated 25.08.1983 and thereafter, she constructed AC sheet roofed room in the suit schedule property, for which, the plaintiffs are paying the electricity charges. In the year 2010, the mother plaintiffs filed a suit vide O.S.No.135 of 2010 against the husband and father of defendants as they tried to interfere with the peaceful possession of the

plaintiff's mother over the suit schedule property. However, during *pendent lite,* the plaintiff's mother was died on 17.12.2015 and the suit was dismissed on 14.09.2016 due to non-representation of the case by the plaintiff's mother. It is also stated that even after the death of their mother, the plaintiffs continued to reside in the suit schedule property. On 25.09.2016 and 09.10.2016, the defendants, along with their henchmen, tried to dispossess the plaintiffs from the suit schedule property. As such, the plaintiffs filed the suit. Thereafter, the defendants filed I.A.No.1 of 2022 in O.S.No.381 of 2016 seeking to appoint advocate commissioner for taking the measurements of the lands of both the parties over suit schedule property.

4. By the impugned order, the petition filed by the plaintiffs under Order XXVI Rule 9 read with 151 of the Civil Procedure Code, was dismissed.

5. Heard Sri P.Rama Sharana Sharma, learned counsel for the revision petitioners/defendants. Though notice was served, none appeared on behalf of the respondents. Perused the material available on record.

6. Learned counsel for the revision petitioners contended that since the petition was filed seeking

appointment of advocate commissioner only for the purpose of noting down the measurements of lands of both the parties over the suit schedule property, the trial Court ought to have allowed the petition for better adjudication of the case. Hence, he prayed the Court to allow the revision petition.

7. In view of the submissions made by the learned counsel for the revision petitioners, this Court has perused the material available on record. It is noteworthy that though the purpose of appointing an advocate commissioner is for collecting the facts, the same facts may be used as an evidence in due course of time. Pertinently, it is impermissible to appoint an advocate commissioner before the commencement of the trial when the trial Court is enable to decide the case based on the documents and evidence adduced by both the parties. Hence, considering the facts and circumstances of the case, this Court is inclined to direct the revision petitioners/defendants to file the petition before the trial Court at an appropriate time if there is any ambiguity in the adduced documents and evidence.

8. Accordingly, the Civil Revision Petition is disposed of. There shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

Sd/- N. SRIHARI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. **The Principal Senior Civil Jude at Khammam.**
2. **One CC to SRI. P. RAMA SHARANA SHARMA, Advocate [OPUC]**
3. **Two CD Copies**

kul/gh

HIGH COURT

DATED:23/12/2024



ORDER

CRP.No.3169 of 2023

DISPOSIN OF THE CRP

WITHOUT COSTS

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27/12/24
5 copies