

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

FRIDAY, THE THIRTY FIRST DAY OF MARCH
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION NO: 2332 OF 2022

Petition under Article 227 of the Constitution of India, aggrieved by the Order dated 22.08.2022 passed in I.A. No. 707 of 2022 in O.S. No.33 of 2022, on the file of Principal Junior Civil Judge's Court, Rayachoty.

Between:

1. Dharmavaram Anjaneyulu, S/o Venkataiah, age 35 years, Hindu, Employee.
2. Dharmavaram Venkataiah, S/o Krishnaiah, age 60 years, Hindu, Cultivation. Both are residents of Battavandlapalli, H/o Guttapalli, Sambepalli Mandal, YSR District.

...Petitioners/Defendants

AND

Potturi Anjaneyulu, S/o Late Reddappa, age 35 years, Hindu, Cultivation, resident of Guttapalli road, H/o Guttapalli, Sambepalli Mandal, YSR District.

...Respondent/Plaintiff

IA NO: 1 OF 2022

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 the operation of the Order and decretal Order dt. 22-08-2022 in I.A.707 of 2022 in O.S.No. 33 of 2022 on the file of the learned Principal Junior Civil Judge's Court, Rayachoty.

Counsel for the Petitioners : Sri. Kaleemulla S

Counsel for the Respondent : Sri. Vutupalli Rajanna

The Court made the following:

HON'BLE SRI JUSTICE RAVI CHEEMALAPATI
CIVIL REVISION PETITION No. 2332 of 2022

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India aggrieved by the orders dated 22.08.2022 passed in I.A.No.707 of 2022 in O.S.No.33 of 2022 on the file of the Court of the learned Principal Junior Judge, Rayachoty.

2. The petitioners are the defendants and the respondent is the plaintiff in O.S.No.33 of 2022 filed for permanent injunction.

3. In the said suit, the respondent filed I.A.No.707 of 2022 under Order-26, Rule-9 of Civil Procedure Code, to appoint an Advocate commissioner to inspect the schedule property, to note down its physical features, boundaries and land in Survey No.277/2 over which the petitioners are claiming right and file his report. The petitioners/ defendants filed counter opposing the same. After hearing both the parties the Court below allowed the said application. Aggrieved by the same, the present Civil Revision Petition is filed.

4. Heard Sri *Syed Kaleemulla*, learned counsel for the petitioners and Sri *Vutupalli Rajanna*, learned counsel for the respondent.

5. Sri *Syed Kaleemulla*, learned counsel for the petitioners, in elaboration would submit that in a suit for injunction, without even commencement of trial and without even bringing the basic evidence on record, the plaintiff cannot ask for appointment of an Advocate Commissioner, since the same amounts to gathering of evidence, which is impermissible in law. However, the Court below upon misconception of facts and circumstances of the case, allowed the petition. Hence prayed to allow the Civil Revision Petition by setting aside the orders impugned.

6. On the other hand, Sri *Vutupalli Rajanna*, learned counsel for the respondent, in elaboration would submit that though Advocate Commissioner cannot be appointed for collection of evidence, but, when there is a dispute regarding localization or identity of the schedule property, appointment of commissioner would immensely help in arriving at a just decision. Hence, the Court below analyzed the facts in proper perspective and rightly allowed the petition. No valid and justifiable grounds are either raised or urged in this Civil Revision Petition warranting

interference with the impugned orders. Hence, prayed to dismiss the Civil Revision Petition.

7. Perused the material available on record. The respondent filed the suit for permanent injunction. Along with the suit, he filed I.A.No.707 of 2022 seeking appointment of Advocate Commissioner stating that the same is necessary to prove false the averments of the written statement filed by the respondents that the boundaries given to the schedule property are not correct and that the schedule property was taken by the government for construction of Handriniva canal. The respondents resisted the said petition by filing counter contending that, out of Ac.2-72 cents in Survey No.274/2, the Government has acquired an extent of Ac.1-16 cents of land in S.No.274/2A and the respondent/plaintiff owns the remaining land in an extent of Ac.1-56 cents in Survey No.274/2B but not Ac.2-72 cents in S.No.274/2 and the endorsement dated 04.04.2022 along with field measurement sketch issued by Special Deputy Collector filed by him clearly shows the boundaries of the properties and hence there is no necessity for appointment of Advocate Commissioner for the purpose of noting down the boundaries.

8. In a Suit for injunction appointing an Advocate Commissioner at the threshold does not arise and such appointment is nothing but gathering of evidence. There is no exclusive bar in asking for appointment of an Advocate Commissioner, in a suit for injunction.

9. The object of local inspection under Order 26 Rule 9 of the CPC is to collect evidence at the instance of the party who relies upon the same. Even if there is a dispute with regard to the identity and location of the suit schedule property, without letting in basic evidence, the parties cannot seek for appointment of an Advocate Commissioner. In **C.R.P.No.1705 of 2022**, this Court has categorically dealt with the circumstances under which an Application under Order 26 Rule 9 can be considered, which reads as follows:

"10. The object of local inspection under Order XXVI Rule 9 of CPC is to collect evidence at the instance of the party who relies upon the same and which evidence cannot be taken in the Court but could be taken only from its peculiar nature on the spot. When the evidence will necessitate that part of the evidence will elucidate a point, which may otherwise be left in doubt or ambiguity purpose. The report of the Commissioner within the suit shall form part of the record. The local investigation is the best way to find out the possession when there is dispute regarding identity of the property. Under the guise of local investigation, party who is making application will not be allowed to collect the evidence. The Court must keep these factors in mind while ordering or rejecting application for

appointment of Advocate Commissioner basing on facts of each case."

10. In the instant case, it prima facie appears that the dispute mainly revolves round the extent of the land acquired by the Government for Handrina Canal rather than the identity of the property and its boundaries. The Court below having observed that a commissioner cannot be appointed for collection of evidence, ought not to have allowed the petition holding it would enable the Court to understand the physical features and to find out any subsequent obliteration of physical features, since the physical features of the schedule property as on today has nothing to do to resolve the prime dispute involved in the instant suit. Therefore, the orders impugned in this Civil Revision Petition require interference of this Court.

11. In view of the above, this Civil Revision Petition is allowed, setting aside the orders dated 22.08.2022 passed in I.A.No.707 of 2022 in O.S.No.33 of 2022 on the file of the learned Principal Junior Civil Judge, Rayachoti. Consequently, I.A.No.707 of 2022 is dismissed. There shall be no order as to costs. However, this Order does not preclude either of the parties to seek appointment of Advocate Commissioner, if there is any ambiguity after completion of the evidence, and in such an event, if the

Court comes to a conclusion that appointment of Advocate Commissioner is required, the Court below may appoint an Advocate Commissioner, after hearing both the parties on its own merits.

As sequel thereto, miscellaneous petition, if any, pending shall stand closed. Interim orders, if any, shall stand vacated.

//TRUE COPY//

SD/- A. VIJAYA BABU
ASSISTANT REGISTRAR

CA
SECTION OFFICER

To

1. The Principal Junior Civil Judge Court, Rayachoty, YSR Kadapa District.
2. One CC to Sri. Kaleemulla S Advocate [OPUC]
3. One CC to Sri. Vutupalli Rajanna Advocate [OPUC]
4. **Two CD Copies**

TK
Cnr

Bhargava

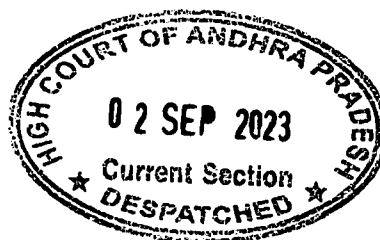
FOR 492 C J

HIGH COURT

DATED:31/03/2023

ORDER

CRP.No.2332 of 2022



5-Copies
P.B.K
16/8/23

ALLOWING THE CIVIL REVISION PETITION