

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
THURSDAY, THE TWELFTH DAY OF FEBRUARY
TWO THOUSAND AND FIFTEEN
PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

CIVIL REVISION PETITION No.5100 of 2012

BETWEEN

Pothineni Nageswara Rao.

... PETITIONER

AND

Peteti Bhanumathi.

...RESPONDENT

Counsel for the Petitioner: MR. M. SUDHIR KUMAR

Counsel for the Respondent: MR. SRINIVAS KARRA

The Court made the following:

-
-
-

ORDER:

This revision is directed against the order passed by the lower appellate Court in I.A.No.44 of 2011 in A.S.No.93 of 2010 dated 23.07.2012 in appointing Advocate Commissioner to inspect the manure pit of the

defendant shown as 'B' in the plaint schedule.

2. The impugned order is questioned by the defendant on the ground that it amounts to collection of evidence through the Advocate Commissioner and it is also contended that the trial Court has considered the entire matter in O.S.No.170 of 2008 and as per para 17 of the judgment dated 15.02.2010, it was found, on facts, that there was no actionable nuisance. The appeal was preferred by the plaintiff against the said judgment and decree, which is pending before the lower appellate Court. Hence, collection of evidence at the appellate stage, being not permissible, the present revision is preferred.

3. On 15.10.2012, while issuing notice before admission, this Court granted interim stay and thereafter, the revision is now coming up for hearing.

4. I have heard the learned counsel for the petitioner and learned counsel for the respondent.

5. Learned counsel for the respondent justifies the impugned order on the ground that it is only the Senior Public Health Officer, who can assess the quantum of nuisance and for that purpose, the Advocate Commissioner was appointed.

6. In my view, the appointment of Advocate Commissioner to collect evidence at the appellate stage was clearly impermissible inasmuch as the agency of the Advocate Commissioner cannot be appointed for the purpose of collecting evidence and in any case, since the entire appeal is before the lower appellate Court, the evidence on record can be examined. The trial Court has also applied its mind and considered the matter, as is evident from the findings in paras 16 to 18 and as such, whether any nuisance is caused by the defendant, is a matter, which has to be primarily determined by the lower appellate Court and if it is answered in the affirmative, whether it is actionable nuisance can also be

considered by the lower appellate Court. In my view, since the appeal is pending from 2010, it is just and appropriate to set aside the impugned order and direct the lower appellate Court to take up and decide the appeal itself, preferably, before end of April 2015.

The civil revision petition is allowed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

February 12, 2015
DSK