

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CIVIL REVISION PETITION NO.1936 OF 2015

Between:

Gram Panchayat, Mortha Village

.. Petitioner

and

Nidumolu Satyanarayana

.. Respondent

DATE OF JUDGMENT PRONOUNCEMENT : 21st JULY, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the judgment? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether Their Lordship wish to see the fair copy of the judgment? | Yes/No |

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.1936 OF 2015

ORDER

I.A.No.569 of 2014 in O.S.No.374 of 2009 on the file of the learned I Additional Junior Civil Judge, Tanuku, was filed by the defendant in the suit under Order 26 Rule 9 CPC to appoint an Advocate Commissioner for recording the physical features available on the ground and to note down whether the plaintiff's shop in the suit schedule property blocked the entrance of the Pasuvularevu (cattle tank) and totally restricted the ingress and egress of Mortha villagers' cattle to the said cheruvu (lake).

By order dated 16.12.2014, the trial Court dismissed the said IA. Aggrieved thereby, the defendant in the suit, the Mortha Gram Panchayat, is before this Court by way of this Civil Revision Petition under Article 227 of the Constitution.

Notice having been ordered, Sri T.V.S. Prabhakar Rao, learned counsel, entered appearance for the respondent-plaintiff.

Heard.

The subject suit was filed by the respondent-plaintiff for a permanent injunction restraining the petitioner-defendant from interfering with his possession and enjoyment over the suit schedule property. The plea of the petitioner-defendant, in its written statement, was to the effect that the respondent-plaintiff had occupied the land at the entrance point of the Pasuvularevu and was causing obstruction to the passage of cattle and he had also blocked the katcha road leading to the burial ground causing obstruction to the dead bodies being carried there for final rites.

The petitioner-defendant stated that it was empowered by law to remove obstructions which caused inconvenience to the public at large and therefore, the suit claim could not be entertained.

Relevant to note, the respondent-plaintiff, deposing as P.W.1, admitted that his shop was situated in front of the tank to which cattle were taken for washing. He however denied the existence of the Pasuvularevu at present. He further stated that if the Pasuvularevu was in existence abutting his shop, he had no objection to vacate the suit schedule property.

Perusal of the order passed by the trial Court reflects that the subject IA was dismissed on the surmise that the petitioner-defendant was trying to collect evidence. However, the trial Court lost sight of the fact that the litigation was not between two private parties and that the defendant Gram Panchayat had filed the IA seeking to protect the easementary rights of the villagers to the Pasuvularevu for the purposes of their cattle. The trial Court also lost sight of the admission made by the respondent-plaintiff as to his shop being in front of the Pasuvularevu and his assertion that he would vacate the suit schedule property if the Pasuvularevu was shown to be in existence. It was therefore the respondent-plaintiff who himself opened the door for filing of the subject IA for appointment of an Advocate Commissioner to verify this fact.

Given the aforesaid facts, this Court is of the opinion that the trial court erred in holding against the petitioner-defendant on the ground that it was attempting to collect evidence. As the respondent-plaintiff himself threw down the gauntlet by stating that he would vacate the suit schedule property if the Pasuvularevu was in existence, the petitioner-defendant was well entitled to seek appointment of an Advocate Commissioner to ascertain the fact.

The order passed by the trial Court is therefore set aside and the matter is remitted to the file of the learned I Additional Junior Civil Judge, Tanuku, for appointing an Advocate Commissioner in the subject IA as prayed for by the petitioner-defendant.

The Civil Revision Petition is allowed. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

21st JULY, 2015
PGS