

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Civil Revision Petition No.3553 of 2016

-
Dated 05th August, 2016

Between:

Odisela Lakshmi

...Petitioner

And

Prasadula Gunna

...Respondent

Counsel for the petitioner: Sri T.D.Phani Kumar

Counsel for the respondent: ---

The Court made the following:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

Civil Revision Petition No.3553 of 2016

-
Dated 05th August, 2016

ORDER:

This civil revision petition arises out of order, dated 09.06.2016, in I.A.No.347 of 2016 in A.S.No.44 of 2012, on the file of the learned Principal District Judge, Visakhapatnam.

I have heard Sri T.D.Phani Kumar, learned counsel for the petitioner, and perused the record.

The petitioner filed O.S.No.284 of 2007 on the file of the learned III Additional Junior Civil Judge, Visakhapatnam for permanent injunction restraining the respondent and people claiming through her

from constructing a wall marked as ABDC in the plaint plan. On appreciation of oral and documentary evidence, the trial Court dismissed the suit by holding that the petitioner failed to prove her possession over the plaint schedule property. Aggrieved by the same, the petitioner filed A.S.No.44 of 2012 in the Court of the learned Principal District Judge, Visakhapatnam. She has also filed I.A.No.347 of 2016 under Order XXVI Rule 9 CPC for appointment of an Advocate Commissioner to note down the physical existence of the lane. The said application having been dismissed, the unsuccessful applicant filed this revision petition.

Being the plaintiff, the petitioner had the burden to prove her right over the suit schedule property. She failed to convince the trial Court to pass a decree. Being the appellant, she can succeed in the appeal only if she is able to prove based on the evidence adduced by her that she has a right over the suit property and that the respondent cannot raise a wall over the allegedly existing lane. In my opinion, an Advocate Commissioner cannot be appointed to find out whether a lane is in fact in existence or not. It is for the petitioner to prove this fact by adducing necessary evidence in the suit or at the most by adducing additional evidence in the appeal with the permission of the appellate Court. Having considered the reasons assigned by the lower Court, I do not find any error therein.

Hence, the civil revision petition is dismissed.

As a sequel to dismissal of the CRP, CRP.MP.No.4564 of 2016 shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

05th August, 2016
VGB