

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMIAL REVISION CASE NO.1186 OF 2012

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. challenging the order in Rc.No.B/495/2012, dated 12-07-2012 on the file of the Executive Magistrate and Tahsildar, Garla village and Mandal, Khammam District.

2. The parties hereinafter will be referred to as they were arrayed before the learned Executive Magistrate.

3. The contention of the learned counsel for the respondent (petitioner herein) is two fold viz., (1) the learned Executive Magistrate ought not to have allowed the petition without a specific finding with regard to existence or non-existence of the road and (2) the order passed by the learned Executive Magistrate is not sustainable either in law or on facts.

4. Per contra, learned counsel for the petitioners (respondents herein) submitted that the respondent (petitioner herein) failed to establish that the land in dispute is private property. He further submitted that the learned Executive Magistrate after considering the material available on record, rightly allowed the petition.

5. It is an admitted fact that the petitioners and respondent belong to Indiranagar Colony of Garla village and Mandal, Khammam District. The Government granted pattas to weaker section people in Indiranagar Colony for construction of houses. It is the case of the petitioners that there is a road in the colony and the respondent encroached the same. A perusal of the record reveals that both parties appeared before the learned Executive Magistrate and submitted their version. For better appreciation of rival contentions, it is not out of place to extract the relevant portion of the order, which reads thus:

"Thorough search has been made in this office to trace the file bearing No.Rc.No.A/1842/92, dated 24-03-1993 to identify the road in the location sketch. But the requisite file could not be traced. The Surveyor post is also vacant, to conduct survey. The way to settle the issue is, directing the petitioners and the respondents to attend this office along with necessary documents, in their support. Accordingly, a notice has been

issued to both of them vide this office Rc.No.B/495/2012,dated 10-07-2012 to attend this office on 11-07-2012 and the notices have been served upon them.”

6. A perusal of the above order clearly indicates that the learned Executive Magistrate has passed the order without any record. The above order further reveals that the learned Executive Magistrate has not called for the report from the Surveyor in order to ascertain whether the road is in existence or not. Merely because both parties agreed to obey the decision of the learned Executive Magistrate, that does not mean the learned Executive Magistrate is entitled to pass an order without specific finding with regard to existence or non existence of the road in dispute. Though pattas were granted in favour of the petitioners way back in the year 1983, no houses were constructed. It is the duty of the learned Executive Magistrate to give a specific finding with regard to existence or non existence of the road. In the absence of any such finding, the learned Executive Magistrate is not entitled to pass an order under Section 133 Cr.P.C. The learned Executive Magistrate has not assigned reasons, much less cogent and valid reasons in support of his order. Any order passed basing on assumptions and presumptions is not sustainable.

7. Having regard to the facts and circumstances of the case, I am of the considered view that the order of the learned Executive Magistrate in Rc.No.B/495/2012, dated 12-07-2012 is not sustainable and accordingly, it is set aside. However, the matter is remanded to the learned Executive Magistrate to pass appropriate orders after taking into consideration the records produced by the Surveyor and the parties to the proceedings.

8. Accordingly, this Criminal Revision Case is allowed. Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 30-06-2016.

Hsd