The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Revision Petition No.4154 of 2016

Date: 09.09.2016

Between:

Polavarapu Ganga Babu

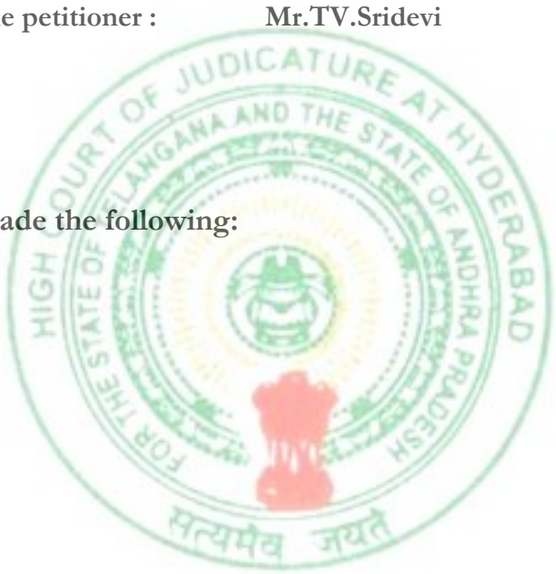
.. Petitioner

and

Rayapureddy Appalanaidu and another

.. Respondents

Counsel for the petitioner : **Mr.TV.Sridevi**



The Court made the following:

O r d e r :

The petitioner, who is defendant No.2 in OS.No.87 of 2012, filed this Civil Revision Petition feeling aggrieved by dismissal of IA.No.304 of 2016 filed by him for appointment of an Advocate-Commissioner to localize the property covered by Exs.B.1 to B.3.

I have heard Smt.TV.Sridevi, learned Counsel for the petitioner, and perused the record.

Respondent No.1 has filed the afore-mentioned suit for injunction simplicitor in respect of the suit schedule property. The petitioner *inter alia* averred in the written statement that respondent No.1 and his father sold a part of the suit schedule property under Ex.B.3 to one Ramakrishna and that the said Ramakrishnas has, in turn, sold a part of the said property under Ex.B.1 to the petitioner and another part of the said property under Ex.B.2 to one Vanga Seshu.

The petitioner has filed the afore-mentioned IA for appointment of an Advocate-Commissioner for localising the property covered by Exs.B.1 to B.3. This Application was dismissed by the lower Court by observing that when

respondent No.1 has not admitted Exs.B.1 to B.3, the Advocate-Commissioner cannot be appointed for localizing the same.

As rightly submitted by the learned Counsel for the petitioner, the reasoning of the lower Court appears to be faulty inasmuch as when Exs.B.1 to B.3 are admitted into evidence, appointment of Advocate-Commissioner for localizing the properties therein did not depend upon the stand of respondent No.1 *qua* the said documents. However, having regard to the facts of the case, I am not inclined to interfere with the order of the lower Court for a reason other than the one, based on which the lower Court has dismissed the Application.

The suit is one for permanent injunction. Therefore, the burden lies on respondent No.1, who is the plaintiff, to establish that he is in possession of the suit schedule property besides having *prima facie* title thereto. Therefore, in such a suit, it is not necessary for the petitioner, who is only one of the defendants, to seek appointment of an Advocate-Commissioner for localising the property. If it is the plea of the petitioner that a part of the suit schedule property is

covered by Ex.B.1, he can prove the same by adducing relevant evidence.

In this view of the matter, I do not find any merit in this Civil Revision Petition and the same is, accordingly, dismissed subject to the observations made herein before.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.5394 of 2016, filed by the petitioner for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 9th September, 2016
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