

**HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**CIVIL REVISION PETITION No.4255 OF 2011**

**ORDER:**

The order dated 23.08.2011 in I.A.No.102 of 2011 in O.S.Nos.2 and 154 of 1999 and passed by the learned Additional Junior Civil Judge, Sompeta, is challenged before this Court.

The principal contention of the learned counsel for the petitioners is that the appointment of Advocate Commissioner is intended to gather evidence, which is impermissible under law, apart from that the Court below erroneously allowed the petition appointing the Advocate Commissioner at a belated stage without there being a pleading even in the written statement, and thus the order is liable to be set aside.

Learned counsel appearing for the respondents supports the order of the Court below.

Having considered the rival submissions it may be noted that it is the claim of the 1<sup>st</sup> respondent that he became the owner of the property covered under Ex.B7 Sale Certificate by virtue of the judgment and decree passed in O.S.No.96 of 1998 and the Court had executed a document in his favour on 21.12.1999. Thereafter he made constructions in the said property and the property is in his possession. A perusal of the written statement in para 3, 1<sup>st</sup> respondent herein categorically stated that the suit schedule property is not vacant site and it is also denied the plaintiffs are in possession. It is the specific case of the 1<sup>st</sup> respondent herein that the father of the plaintiff viz., Jagannatha Rajamani Raj Deo had alienated the property covered under

Ex.B.7 to one Bellala Vignaesam under a sale letter dated 15.09.1944 for a sum of Rs.1,000/- and delivered the possession there under on the same day. The 2<sup>nd</sup> respondent herein viz., Bellala Shanmukha Rao is the son of Bellala Vignesam and he along with his mother in turn entered into a sale agreement dated 25.12.1992 in favour of the 1<sup>st</sup> defendant / 1<sup>st</sup> respondent and as they failed to execute the sale deed O.S.No.96 of 1998 came to be filed and the same was decreed in favour of the 1<sup>st</sup> respondent herein. It is only by virtue of the orders in E.P.No.4 of 1999, Ex. B.7 sale deed came to be executed in his favour and then onwards he is in possession and in fact had made constructions after obtaining permissions from the Gram Panchayat. Inasmuch as, on one hand the petitioners claim that the site be vacant and the 1<sup>st</sup> respondent herein claims that the property covered under Ex.B.7 is covered with certain constructions, the said fact is required to be ascertained and the only way to ascertain such aspect is by physical verification. In that view of the matter, the Court below had taken a pragmatic view and appointed an Advocate Commissioner for visiting the site and identifying the properties covered in the plaint schedule and also under Ex.B.7 and to note the physical features. In other words the task entrusted to the Advocate Commissioner is to verify and report the actual situation occurring in the site. This cannot be called as gathering of any evidence in favour of either of the parties. Further, the controversy of this nature can only be decided either by the court itself by inspecting the property or by obtaining information in relation to the existence or non-existence of structures through an independent advocate. So far as the delay aspect which was urged by the learned counsel for the petitioners

is concerned, the Court below having been conscious of the same have awarded costs of Rs.500/- and in that view of the matter the said objection also stands addressed.

In the facts of the present case, I do not see any illegality and infirmity in the impugned order of the court below and does not warrant any interference of this Court.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Consequently, the miscellaneous petitions pending, if any, shall also stand closed.

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**CHALLA KODANDA RAM, J**

Dated: 01.02.2016.  
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