

* HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+ CIVIL REVISION PETITION No. 534 of 2016

% 1st March, 2016

Nerudu Srinivas Reddy and another.

... Petitioners...

AND

\$ Neerudu Sunanda @ Sunanda Reddy @ Sripathy
Sunanda Reddy rep. by her G.P.A. Neerudu Bharathi
Devi

... Respondent...

! Counsel for the Petitioner : Sri Srinivas Chitturu

^ Counsel for the respondent : Sri P. Sriharsha Reddy

< Gist:

> Head Note:

? Cases referred:

1. 2009 (1) ALD 548
2. 1992 Law Suit (AP) 381 = 1993 (1) ALT 204
3. 2015 ALT 560
4. (2013) 14 SCC 1

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.534 OF 2016

ORDER:

The Civil Revision Petition is filed by the petitioners who are the defendants in O.S. No.9 of 2007 on the file of the learned Junior Civil Judge, Nalgonda. The suit is filed seeking perpetual injunction restraining the defendants, their agents, servants, workmen etc., from interfering with the peaceful possession and enjoyment of the suit schedule property. The suit schedule property is an agricultural dry land of Ac.10-00 guntas situated in Sy.No.98 (98/) of Avuravani village, Narketpally Mandal of Nalgonda District. Suit is at the stage of arguments, particularly the defendants' arguments. At that stage I.A.No.330 of 2015 is filed seeking to reopen the suit and for appointment of Advocate Commissioner to note the physical features of the suit schedule as per the work memo to be filed by both the parties. As per the averments in the affidavit filed in support of the I.A., the petitioners have been contending that the suit schedule property was in their possession and enjoyment for a long time. The suit schedule property is only a portion of the land in the entire survey number and according to them they have made developments in the land which would show their possession and enjoyment. Unless an Advocate Commissioner is appointed to note the various physical features such as available water resources, irrigation channels, mosambi garden and localization of the suit schedule property in the total extent of the survey number great prejudice would be caused to the petitioners. The grant of relief in the I.A. was resisted by the respondents/plaintiffs. Learned Junior Civil Judge, Nalgonda, after considering the case on merits dismissed the I.A.

Sri Chitturu Srinivas, learned counsel for the petitioners would urge that while reiterating the averments in the I.A. affidavit and by drawing specific attention of this court to the pleading in the written statement particularly about the existence of bore wells and the water sources unless these aspects are brought on record the controversy in issue cannot be resolved. It is the case of the petitioners that, as pleaded by them in the written statement, it is only by virtue of interim injunction granted by the Court respondents-plaintiffs unlawfully entered into the possession and unless this court reopens the case and appoints Advocate Commissioner great prejudice would be caused to the petitioners. He submits by placing reliance on the judgments of this court in **Yeera Ayyanna Vs. H. Marthamma, B. Lalita Devi Vs. Special Court under A.P. land Grabbing (Prohibition) Act and K. Dayanand and another Vs. P. Sampath Kumar** and contends that in exercise of the inherent power of the court under Section 151 of CPC, the Court has ample power to grant relief and further there is no bar for appointment of Advocate Commissioner if the same is helpful in deciding the controversy in issue, as such no prejudice would be

caused to the respondents.

On the other hand Sri P. Sriharsha Reddy by placing reliance on the judgment of the Supreme Court in **Bagai Construction Vs Gupta Building Material Store** would submit that the reopening of the evidence is impermissible and such reopening of the case at belated stage under Section 151 C.P.C. is impermissible. Therefore, he prays for dismissal of the Civil Revision Petition.

Having considered the rival submissions one thing may be noticed that the IA was filed invoking inherent powers of the court under section 151 CPC. CPC does not provide any specific provision for reopening of a case after completion of recording evidence. It is only for that reason petitioners had invoked the inherent power under Section 151 CPC. The invoking of inherent power under Section 151 C.P.C. in the facts of the present case is for bringing of further evidence in the form of an Advocate Commissioner's report by the petitioners. In that view of the matter, the procedure for adducing and recording of evidence as provided for under Order XVIII may be noticed. Order XVIII C.P.C. deals with the rights of the parties for leading evidence and for further addressing arguments including the power of the Court to examine or cross-examine a witness and also recall and reexamine a witness. Order XVIII Rule 17A C.P.C. where a provision was available for production of evidence not previously known or which could not be produced despite due diligence was repealed by the Act 46 of 1999, Code of Civil Procedure (Amendment) Act, 1999 with effect from 01.07.2002. In other words, the right of a party to produce evidence not previously known or which could not be produced despite due diligence was also taken away. The effect of the omission of Order XVIII Rule 17A C.P.C. in the context of the other provisions would leave no manner of doubt that the parties to the proceedings are required to be diligent in the first instance and at every stage to protect their interests and bring best possible evidence at the earliest. The same is evident from various other amendments which have been brought in the CPC. The object of various amendments is to curtail the delay in disposal of the suits and to discourage the parties to the suit to prolong the proceedings. In the present case, it is not even the case of the petitioners that the application of the nature seeking appointment of the Advocate Commissioner to note the physical features of the suit schedule land could not have been made at the earliest point of time. We may note that the suit came to be filed in the year 2006, numbered in the year 2007 and the written statement itself came to be filed by the

petitioners on 28.03.2007. It is an admitted fact that the suit is at the stage of arguments of the defendants. At this belated stage the relief of the nature cannot be granted. Another aspect which needs to be considered is maintainability of such application invoking section 151 C.P.C. though relief of the nature is akin to the relief that could be considered under Order XVIII Rule 17A C.P.C. The enormous delay that is likely to be caused in entertaining the applications of this nature at every stage succinctly elaborate in the judgment cited by the learned counsel for the respondents. At this stage, this court is conscious of the limitations. Further allowing of the application of this nature at this stage would only be paving way for one or the other of the parties to fill lacuna in evidences which is also not permissible. In that view of the matter, the order passed by the junior civil judge refusing to entertain the application for reopening of the case and further refusal to appoint advocate commissioner cannot be found fault and accordingly there are no merits in the Civil Revision Petition.

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

CHALLA KODANDA RAM, J

Dated:01.03.2016

Note: L.R. Copy to be marked.

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