

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.4105 of 2010

ORDER :

This revision is filed by the petitioner/plaintiff, aggrieved by the order dated 08.07.2010 in I.A.No.964 of 2010 in O.S.No.253 of 2010 passed by the Principal Junior Civil Judge, Vijaywada.

2. Heard the learned counsel for the petitioner/plaintiff and taken as heard the respondents, who are defendants in the said suit, since served failed to attend.

3. The revision is pending since 2010 even without ordering notice at the stage before admission before ordering notice. The petitioner/plaintiff filed I.A.No.964 of 2010 under Order XXVI Rule 9 C.P.C. for appointment of an advocate commissioner for local inspection to note down the physical features of the plaint schedule property in the suit for bare injunction and the lower Court, after contest, dismissed the petition on 08.07.2010. The same is now impugned in the revision.

4. The impugned dismissal order of the lower Court, under a mistaken impression and without even reading properly the Order XXVI Rule 9 and Section 75 C.P.C., says

the purpose of appointment of an advocate commissioner sought to note down the physical features regarding possession of property cannot be allowed as a party cannot be allowed to fish out evidence by appointment of a commissioner. The lower Court did not even notice the distinction between fishing out information (which is not permissible) and collection of evidence (which is permissible). What is prohibited of fish out information by commissioner is X or Y stated to him at the time of inspection A or B in possession and the like. It is not prohibited of apparently visible physical features (which is even collection of evidence).

5. In fact, this Court, in *Bandi Samuel and another v. Medida Nageswara Rao*¹ referring to the several expressions considered the scope of Order XXVI Rule 9(1) and Section 75 C.P.C. The very wording of Rule IX of Order XXVI says Commissions to make local investigation. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mense profits or damages or annual net profits, the Court may issue a commission to such person

¹ CDJ 2016 APHC 619

as it thinks fit directing him to make such investigation and to report thereon to the Court. Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules. The very rule no way says in which suit, a commissioner can be appointed and cannot be appointed, as in any civil suit, a commissioner can be appointed, where the Court thinks fit of necessary of any local investigation having deemed fit. The very wording is local investigation and the purpose of local investigation is to elucidate any matter in dispute itself indicates permissibility of collection of evidence, but mainly from the unique feature of such collection saves much oral evidence and valuable time of the Court and parties or by oral evidence cannot effectively be proved like measurement and demarcation, identify on ground and physical features noting etc.,

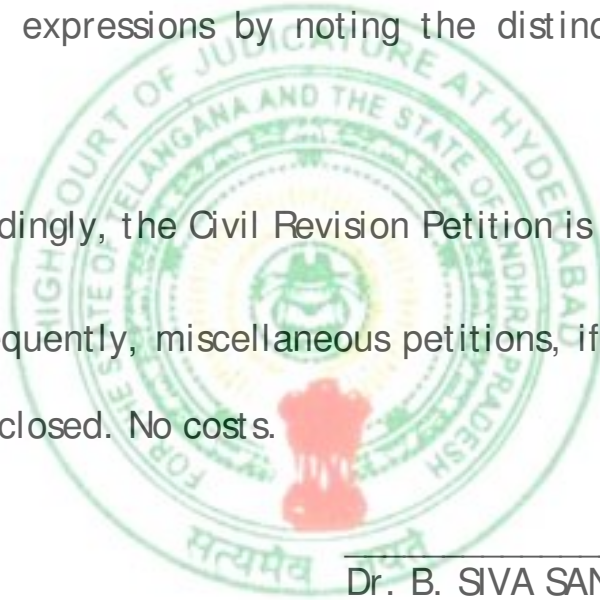
6. The lower Court went wrong in saying in a suit for injunction, the purpose to note down the physical features is fishing out information. The expression in Bandi Samuel (supra) clearly distinguished what is meant by fishing out information and what is elucidating the matter in controversy other than by fishing out information. Fishing information prohibited is to make a local enquiry of hearsay

material from the persons gathered there or the like, that is prohibited and not noting of physical features.

7. Having regard to the above instead of passing any order on the revision, that too, in the absence of the other side and instead of keeping the matter further pending at this stage, after seven years to order notice, the petitioner is given liberty to file a fresh petition before the lower Court to consider on own merits after contest with reference to the settled expressions by noting the distinction referred supra.

8. Accordingly, the Civil Revision Petition is disposed of.

9. Consequently, miscellaneous petitions, if any, pending shall stand closed. No costs.



Dr. B. SIVA SANKARA RAO, J

Date: 20-11-2017
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Note: L.R. Copy to be marked –yes.

* HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

+ CIVIL REVISION PETITION No.4105 of 2010

%20-11-2017

Between:

Shameem Begum

...petitioner

Vs.

Vennapusa Chenna Reddy and another
Respondents

...

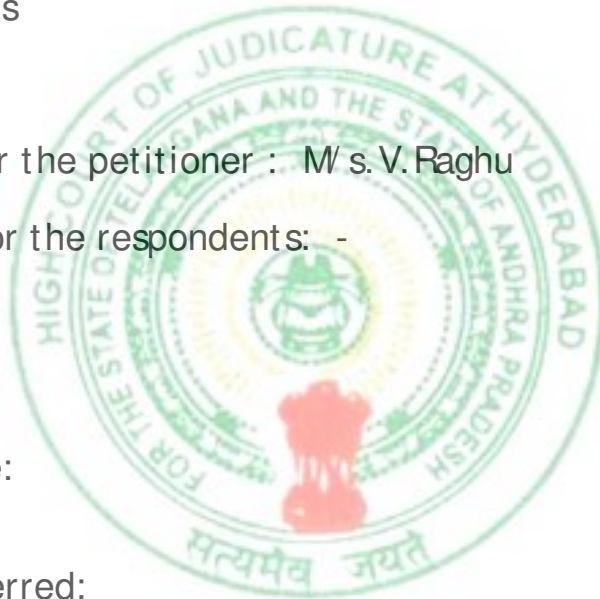
!Counsel for the petitioner : M/ s.V.Raghu

Counsel for the respondents: -

<Gist :

>Head Note:

? Cases referred:





IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA

PRADESH

CIVIL REVISION PETITION No.4105 of 2010

Between:

Kasi Reddy Sddammagari Harinath Reddy
...petitioner

Vs.

Avula Danamma and two others
Respondents ...

DATE OF JUDGMENT PRONOUNCED: 20.11.2017

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/ No |
| 2 | Whether the copies of judgment may be marked to Law Reports/ Journals | Yes/ No |
| 3 | Whether Their Ladyship/ Lordship wish to see the fair copy of the Judgment? | Yes/ No |

