

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.3124 OF 2014

ORDER:

Heard both sides at length and perused the impugned order.

It is the settled law that in a suit for possession based on title or for declaration with consequential relief of possession or even in a suit for injunction simpliciter based on title as the case may be; if the defendant sets up any claim of adverse possession, the burden is always on the defendant to establish when from he is setting up adverse possession, when he claims dispossessed the plaintiff and how it is to the knowledge of the plaintiff. Once such is the case and that too in such event, there is no need for the plaintiff to set up any specific plea as to when he was allegedly dispossessed if any, more particularly for the reason that the person claiming adverse possession must establish the same by setting up the pre-requisites of the *nec vi, nec clam and nec precario*. The proposed amendment by the plaintiffs sought for is thus academic and they need not even sought practically and instead of so observing, the dismissal by the lower court is unsustainable, leave about the fact that even there is no specific plea once evidence is let in by the parties, the burden of proof fails significance for appreciation of the evidence

available on record irrespective of who let in in appreciation as to in whose favour the evidence tilts.

Accordingly and with the above observations, the revision is disposed of for nothing to keep pending. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

DR.B.SIVA SANKARA RAO, J

06.11.2017

*Note: issue C.C. by tomorrow.
B/o.SS*

