

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

CIVIL REVISION PETITION NO.376 OF 2018

DATED:25-01-2018

Between:

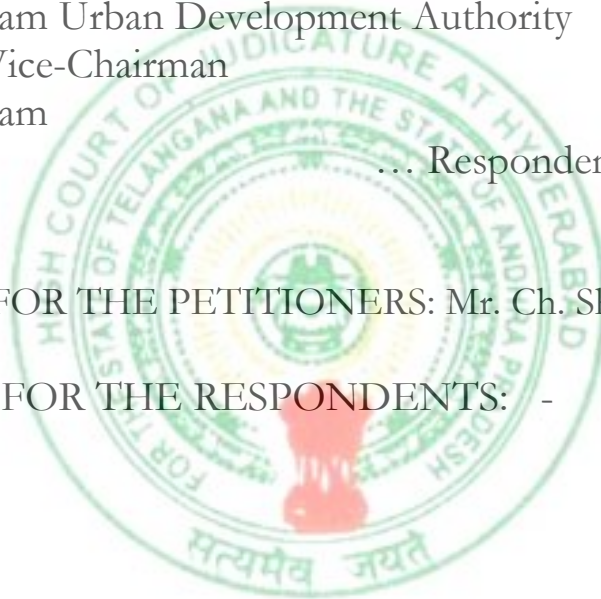
Chatla Somulamma (died)
and others ... Petitioners

And

Visakhapatnam Urban Development Authority
Rep. by its Vice-Chairman
Visakhapatnam ... Respondents
and others

COUNSEL FOR THE PETITIONERS: Mr. Ch. Shanmukha Rao

COUNSEL FOR THE RESPONDENTS: -



THE COURT MADE THE FOLLOWING:

ORDER:

This civil revision petition is filed against order dt.26.12.2017 in I.A. No.738 of 2017 in O.S. No.198 of 2005 on the file of the Metropolitan Sessions Judge-cum-I Additional District and Sessions Judge, Visakhapatnam.

The petitioners filed the aforementioned suit for declaration of title and recovery of possession of the suit schedule property from respondent No.1. During the midst of the trial, the petitioners have filed the aforementioned application for appointment of an Advocate Commissioner to localize the suit schedule property with the assistance of the Mandal Surveyor and to note the physical features therein including identifying the correct survey number in which the plaint schedule property is situated.

When it is the pleaded case of the petitioners that the suit schedule property is situated in Sy. No.36, the burden is on them to prove the said plea based on independent evidence to be adduced by them. The petitioners cannot first file the suit and later try to gather the evidence by seeking appointment of an Advocate Commissioner. As rightly observed by the Court below, the purpose of Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (CPC) is for elucidation of any matter in

dispute on the discretion of the Court. Even before the filing of the suit, the petitioners ought to have gathered substantive piece of evidence to support their claim. Therefore, the petitioners cannot use the provisions of Order XXVI Rule 9 of CPC to collect evidence through advocate commissioners.

For the aforementioned reasons, I do not find any merit in this civil revision petition and the same is accordingly dismissed.

As a sequel to dismissal of the civil revision petition, I.A. No.1 of 2018 shall stand disposed of as infructuous.

25-01-2018

bnr

C.V. NAGARJUNA REDDY, J

