

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

APPEAL SUIT NO.1082 OF 2018

JUDGMENT:-

The original proceedings in O.S.No.2/2018/F2 out of which the present Appeal arises was filed by the plaintiffs against the defendants for partition of the suit schedule property into equal shares and to allot one share to the plaintiffs, for costs and other reliefs. It transpires that on 24-02-2018 the Agent to the Government and District Collector, West Godavari District passed the impugned order, while dismissing the suit without costs and directed the Sub-Collector, Kukunoor to initiate action for ejectment of the plaintiffs and defendants from the suit schedule property by following due process of law and to take vacant possession of the property and to deliver the same to the Tahsildar, Velairpadu Mandal. This Court ordered notice to the respondents. As per the memo filed with USR No.62703 of 2018, notices were served on all the respondents. For the 3rd respondent, there is appearance by the learned counsel. Both learned counsel submit that the order passed is totally opposed to all known canon of law and flouts all the rules of natural justice. The direction granted is far beyond what is actually pleaded. The learned counsel for the appellants pointed out that the Agent to the Government and District Collector, West Godavari District is a quasi judicial authority who is bound to follow the due

process of law and procedures while adjudicating any matter. According to the learned counsel for the appellants, the order passed is totally contrary to law.

This court after perusing the documents, namely plaint and impugned order is of the opinion that the Agent to the Government and District Collector, West Godavari District has passed the impugned order without considering the facts and circumstances. To add insult to the injury, he dismissed the suit and directed the Sub-Collector, Kukunoor to initiate action for ejection of the plaintiffs and defendants from the suit schedule property by following due process of law and to take vacant possession of the property and to deliver the same to the Tahsildar, Velairpadu Mandal. This court also notices the judgment passed by a learned single judge of this court in A.S.No.1014 of 2010 on 04-07-2011 wherein it was held as under:-

“But for the fact that the suits are to be instituted before the specialized authorities in agency areas, the procedure for adjudication of those suits is similar to the suits filed under C.P.C. Issues are required to be framed, based upon the pleadings, the parties are permitted to adduce evidence and the concerned authority discharging the functions of the Court can render its judgment. In the instant case, the appellants herein presented a plaint claiming the relief of perpetual injunction. The respondents on their part filed a written statement. The Agent to Government ought to have framed an issue and then permitted the parties to adduce evidence. Instead, a

report was called for from the Tahsildar. Such a course is totally impermissible in law.

To certain extent, the appellants had also contributed for the improper disposal of the appeal. Based upon the report submitted by the Tahsildar, the appellants have amended the plaint schedule. Taking these developments into account, the Agent to Government dismissed the suit, leaving it open to the appellants to pursue the further remedies.

The procedure adopted by the Agent to Government was not at all correct. He ought to have permitted the parties to adduce evidence and then decide the matter on merits. There was absolutely no justification to dispose of the suit without recording any evidence. On this short ground, the A.S. is allowed and the order under appeal is set aside. The matter is remanded to the Agent to Government, Kakinada for fresh consideration and disposal on merits, after recording evidence.

The said judgment is applicable on all fours to this case. In that view of the matter, this court is of the opinion that there are merits in the appeal and the same is liable to be allowed.

Accordingly, the Appeal Suit is allowed. The Agent to the Government and District Collector, West Godavari District is directed to enquire into the matter *de novo* after giving an opportunity to both parties to introduce oral and documentary evidence and to pass an order in accordance with law. Miscellaneous Petitions pending, if any, shall stand closed in consequence.

D.V.S.S.SOMAYAJULU,J

05-09-2018
TSNR