

The Hon'ble Sri Justice V.RAMASUBRAMANIAN

CIVIL REVISION PETITION No.5526 OF 2017

Date:25.01.2018

Between:

Vissamsetti Rama Mohana Rao S/ o.Venkata Krishna Rao,
Aged about 56 years, R/ o.Mopidevi village & Mandal,
Krishna District.

...Petitioner

Vs.

Vissamsetti Leela Venkata Kanaka Gupta,
S/ o.Stha Ramananeyulu, aged about 37 years,
R/ o.Mopidevi Village & Mandal, Krishna District.

... Respondent

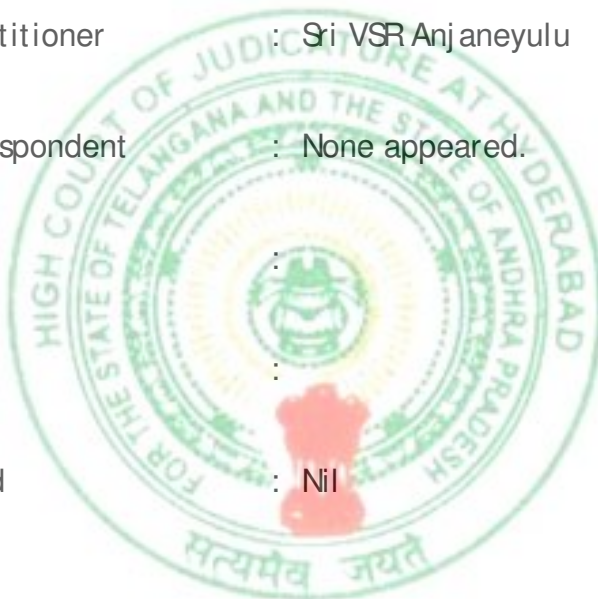
Counsel for Petitioner : Sri VSR Anjaneyulu

Counsel for Respondent : None appeared.

Gist :

Head Note :

Cases Referred : Nil



HON' BLE SRI JUSTICE V. RAMASUBRAMANIAN

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ORDER:

Aggrieved by the dismissal of an application for the appointment of an Advocate Commissioner, the plaintiff in a suit for permanent injunction has come up with the above revision petition.

2. Heard Mr. V.S.R.Anjaneyulu, learned counsel for the petitioner.

3. On 27.10.2017, notice was ordered to the respondent and interim stay was also granted. Service of notice was completed on 08.11.2017. Thereafter, the matter came up on three occasions. This is the fourth occasion and the respondent has not chosen to enter appearance through counsel. Therefore, the revision was taken up for disposal on merits.

4. On principle, the trial Court was right in holding that an Advocate Commissioner cannot be appointed to gather evidence especially in a suit for injunction.

5. But in this case, the suit was originally filed for permanent injunction and later it was amended to include a prayer for mandatory injunction on the ground that certain chips and other material were dumped in the suit property after the institution of the suit.

6. If a Commissioner is sought to demonstrate what has happened after the institution of the suit and if such prayer is made after seeking a consequential amendment to the plaint, the prayer cannot be construed as one for gathering evidence. Therefore, the trial Court was wrong in applying the normal rule.

7. In view of the above, the revision is allowed and the impugned order is set aside. The application of the petitioner for appointment of

Commissioner is allowed. The trial Court shall now appoint a local counsel and proceed further with the matter.

8. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

January 25, 2018
KTL

