

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

FRIDAY, THE SEVENTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SMT JUSTICE P.SREE SUDHA

CIVIL REVISION PETITION NO: 4600 OF 2014

Petition filed under Article 227 of the Constitution of India, against the order dated 30-10-2014 passed by the Prl.Junior Civil Judge, Gadwal in I.A. No. 285/2014 in O.S. No. 189/2005

Between:

1. Chinna Goud, s/o Adivanna Goud aged 40 years, cultivation
2. Kareppa Goud, s/o Adivanna Goud aged 38 years, cultivation
3. Venkatanna Goud, s/o Adivanna Goud aged 33 years, cultivation All are residents of Gorla Khan Doddi, Ghattu Mandal Mahaboobnagar Dt.

.....PETITIONERS/PETITIONERS

AND

1. Boya Kareppa, S/o Boya Bajaranna alias Boya.Bojjanna, aged 40 years, cultivation
2. Boya Thimmappa, s/o Boya Ranganna aged 25 years, cultivation, Both are residents of Gattu Village & Mandal Mahaboobnagar Dt.

.....RESPONDENTS/RESPONDENTS

I.A. NO: 1 OF 2014(CRPMP. NO: 6297 OF 2014)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings in O.S. No. 189 of 2005 on the file of the Prl. Junior Judge's Court, at Gadwal, pending the above Revision Petition

Counsel for the Petitioners: SRI R.PRASAD

Counsel for the Respondents: M SREEKANTH

The Court made the following: ORDER

THE HON'BLE SMT JUSTICE P.SREE SUDHA
CIVIL REVISION PETITION NO.4600 OF 2014

ORDER

Aggrieved by the order dated 30.10.2014 passed in I.A.No.285 of 2014 in O.S.No.189 of 2005 on the file of the learned Principal Junior Civil Judge, Gadwal, the petitioners filed this revision.

The petitioners herein are petitioners-defendants in the above application.

The petitioners herein filed an application before the Court below seeking appointment of an Advocate-Commissioner to note down whether Cheeni Garden is in existence or not in the suit schedule property. The Court below dismissed the same on the ground that there is no merit in the contentions.

Heard the learned counsel on either side and perused the record.

Learned counsel for the petitioners would contend that they have shown valid reasons for appointment of an Advocate-Commissioner and that the suit is at the stage of beginning of the defendants evidence, and as such it is the right time to file the application and that if the Advocate-Commissioner is appointed, it would clinch the issue as to who is in possession of the suit property and would help the Court to come to a right conclusion. He would further contend that rising of the Cheeni Garden was found by the Mandal Revenue Officer in the revenue proceedings, and thus, requested the Court to set aside the impugned order.

O.S.No.189 of 2005 is filed for declaration of plaintiff as owner of the suit land and to issue perpetual injunction restraining the defendants. During the pendency of the suit, the petitioners herein filed I.A.No.285 of 2014 for appointment of an Advocate-Commissioner for local inspection of the suit land i.e., Sy.No.270 of an extent of Ac.10.14 guntas situated within the limits of Ghattu Village and Mandal, to elucidate whether Cheeni Garden is in existence in the suit land.

In the affidavit filed in support of the application before the Court below, the petitioners would contend that their father acquired ownership rights by virtue of the sale deed and after his death they succeeded to the suit land and became absolute legitimate owners. They raised Cheeni Garden besides other crops about more than fifteen years. When they made a suggestion to P.W.1 that the defendants are cultivating Cheeni Garden in the suit land since sixteen years, he denied the same. In fact the garden is still existing in the subject land and that so far they have harvested three crops and the trees are at the age of more than fifteen years and are at the yielding stage. They would also pleaded that to know the existence of Cheeni Garden in the subject land, a local inspection is proper, and thus, prayed for appointment of an Advocate-Commissioner.

The respondents opposed the above contentions by filing counter to the application. In the counter, they contended that Cheeni Garden was never raised by the petitioners and that they are in possession of the suit land as owners and possessors of land and that the evidence of the plaintiffs was closed and now the suit

is coming up for adducing the evidence of defendants. They would also contend that the Hon'ble Apex Court time and again clearly opined that Commissioner cannot be appointed for ascertaining as to who was in possession of the subject property as on the date of filing of the suit. They would further contend that it is the duty of the Court to decide the same basing on the oral and documentary evidence let in by both the parties during the course of trial as per **BONGU RAMULU V/s. GUDUR NARENDER REDDY**¹ and that the suit is filed for declaration of title but not to ascertain any *mesneprofits*, and thus, they prayed for dismissal of the application as not maintainable.

The father of the first respondent possessed the subject property by way of 38-E of A.P. Tenancy Act and enjoyed it till his death and after his demise the family members are enjoying the same. It is to be observed that possession of the subject property is to be decided basing on the oral and documentary evidence and it cannot be entrusted to the Commissioner in a suit for injunction.

Both the learned counsel relied upon case law.

Admittedly, the suit is filed for declaration of title and permanent injunction. During the pendency of proceedings the petitioners filed the present I.A. contending that they raised Cheeni Garden since fifteen years and it was denied by the respondents by filing elaborate counter.

The present application is filed in the year 2014 in a suit of the year 2005. If at all the petitioners have any grievance with regard to existence of the garden, they should filed the application

¹ 1998 (3) ALT 473

at the earliest point of time. Keeping quiet for nine years and that too, when the suit is at the stage of adducing the evidence of defendants, no purpose would be served in appointing an Advocate-Commissioner and it is nothing but collecting evidence. More over, the details of the garden and its existence as on today are not placed before this Court.

Therefore, this Court finds that there is no merit in the revision and the same is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

**SD/-M.MANJULA
ASSISTANT REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To,

1. The Pri. Junior Judge's Court, at Gadwal, Mahaboobnagar District
2. One CC to SRI P ANIMI REDDY Advocate [OPUC]
3. One CC to SRI. M SREEKANTH Advocate [OPUC]
4. Two CD Copies

5. one spare copy -
BS

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HIGH COURT

DATED:17/12/2021

**ORDER
CRP.No.4600 of 2014**



DISMISSING THE CIVIL REVISION PETITION

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