

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**FRIDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SMT JUSTICE P.MADHAVI DEVI

CIVIL REVISION PETITION NO: 3053 OF 2022

Petition under Article 227 of the Constitution of India, against/aggrieved by the Order dated.12/12/2022 in I.A.No.100078 of 2022 in O.S.No.1033 of 2022 on the file of the Hon'ble Principal Junior Civil Judge – cum - Judicial Magistrate of First Class at Jangaon.

Between:

1. Nalla Wilson, S/o Nalla Amos, aged about 29 years, Occupation: Private Service, Resident of D.No. Nellutla Village, Lingla Ghanapur Mandal, Jangaon District.
2. Nalla-Rahul, S/o Simon @ Laxmaiah, aged about 29 years, Occu:- Private Job, R/o H.No.5-18/17, Nellutla Village, Linghala Ghanapur Mandal, Jangaon District.

**...REVISION PETITIONER/PETITIONERS/PLAINTIFFS
AND**

1. Beldi Rani, W/o Beldi Anjaiah aged about 54 years, Occu:- Housewife, R/o H.No.2-6-123 Bus Stand Road, Jangaon Town, Jangaon District.
2. Beldi Ajay Kumar S/o Beldi Anjaiah aged about 30 years, Occu:- Private Service, R/o H.No.2-6-123, Bus Stand Road Jangaon, Jangaon Town, Janagon District.

...RESPONDENTS/RESPONDENTS/DEFENDANTS

IA NO: 1 OF 2022

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.1033 of 2022 on the file of the Principal Junior Civil Judge cum Judicial Magistrate of First Class at Jangaon.

Counsel for the Petitioners: SRI B. SHANKER

Counsel for the Respondent No.2: SRI G. ANANDAM

The Court made the following: ORDER

THE HONOURABLE SMT. JUSTICE P. MADHAVI DEVI

CIVIL REVISION PETITION NO.3053 OF 2022

ORDER

This Revision Petition is filed by the petitioners who are the plaintiffs in O.S.No.1033 of 2022 challenging the order of the Principal Junior Civil Judge-cum-Judicial Magistrate of First Class at Jangaon dt.12.12.2022 in I.A.No.1078 of 2022 in I.A.No.866 of 2022 in I.A.No.616 of 2022 in O.S.No.1033 of 2022.

2. The learned counsel for the petitioners, Sri B.Shanker, submitted that the suit has been filed for permanent injunction against the respondents/defendants and ad interim injunction was granted in favour of the petitioners, *vide* orders in I.A.No.616 of 2022. The respondents/defendants have filed a stay vacate petition in I.A.No.866 of 2022. The petitioners filed I.A.No.1078 of 2022 in I.A.No.866 of 2022 for appointment of an Advocate Commissioner to verify the existence of a 'Four Wheel Garage shed' in the suit 'A' schedule property and submit a report thereon. The plaintiffs were claiming that since the purchase of the property, their father had established the Garage by name 'Four Wheel Garage' and was in possession of the same. The said

Application has been opposed by the respondents and after considering the arguments of both the parties, the Civil Court has dismissed the said Application. Against the said order, the present CRP is filed.

3. The respondents have filed a caveat petition and therefore, the learned counsel representing the respondents has also been heard at the admission stage itself.

4. While the learned counsel for the petitioners relied upon the averments made in the affidavit filed in support of the petition, he also placed reliance upon the following two decisions:

(1) **Phoolchand Asra Vs. Nagar Palika Nigam Raipur and others¹.**

(2) **Bommireddy Tirupathi Reddy Vs. Dokka Kondamma and others².**

He submitted that where there is a dispute of fact and the same can be elucidated by examination by a Commission, then appointment of an Advocate Commissioner is justified.

¹ Writ Petition (227) No.821 of 2019 of the High Court of Chhattisgarh, Bilaspur dt.09.09.2022.

² Civil Revision Petition No.944 of 2018 of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh dt.06.07.2018.

5. Learned counsel for the respondents, Sri G. Anandam, on the other hand submitted that the suit is still at trial stage and the suit is for injunction and therefore appointment of an Advocate Commissioner at this stage is not warranted and that it is filed only to protract the stay vacate petition filed by the respondents. In support of his above contention, he placed reliance upon the judgment of this Court in the case of **Koduru Sessa Reddy Vs. Gottigundala Venkata Rami Reddy and others**³.

6. Having regard to the rival contentions and the material on record, this Court finds that the issue in this CRP is only with regard to necessity of appointing an Advocate Commissioner at the stage of considering the stay vacate petition filed by the respondents. The petitioners/plaintiffs have already been granted ad interim injunction. The petitioners are claiming possession over the property and in proof of the same, it is submitted that their father had purchased the property and constructed a shed by name 'Four Wheel Garage' and he was in possession of the same till his death and thereafter, the plaintiffs are in possession of the same. They have requested for appointment of an Advocate Commissioner only to verify whether there is a Four Wheel

³ 2006 (1) ALD 372

Garage in the suit schedule property. This cannot be said to be dilatory tactics. If there is a need for a factual verification, this Court is of the opinion that there cannot be any reason for not appointing an Advocate Commissioner to verify the same. The judgments relied upon by the learned counsel for the petitioners support this stance of this Court. For the purpose of ready reference, the relevant paragraphs of the said judgments relied upon by the petitioners are extracted hereunder:

In the case of **Phoolchand Asra Vs. Nagar Palika Nigam Raipur and others** (1 supra), the Hon'ble High Court of Chhasttisgarh, Bilaspur has held as follows:

10. Under Order 26 Rule 9 of C.P.C., the court itself can exercise the power or in order to elucidate the disputed fact, and on the question of encroachment and location/identification of land on an application filed by the parties. More so when there is no agreed map between the parties, the Municipal Corporation or Municipal Council or Panchayat can enter into dispute and decide the same by placing correct position of the parties. A plain reading of the provision says that the power can be exercised at any stage. Basic purpose to exercise power under Order 26 Rule 9 of C.P.C. is to separate the wheat from chaff and in cases where it is necessary to elucidate the relevant facts, the Court can exercise its powers. It must be remembered that the procedural law is made to advance the cause of justice and not to strangle the litigant on hyper technical grounds. In Order 26 Rule 9 of C.P.C. the word used is – "elucidate" and its meaning as per Websters Dictionary is "to make light or clear, to

explain, to remove obscurity from and render intelligible, to illustrate." According to Chambers Dictionary, "elucidate" means to make lucid or clear or to throw light upon, to illustrate, making clear, explanatory."

14. Now coming to the facts of the present case, there is dispute regarding flow of drainage water. According to the petitioner/plaintiff, there is an encroachment over the drainage and which causes obstruction in the smooth flowing of drainage water, whereas respondent No.3 has stated that there is no encroachment and due to garbage/polythene, papers, waste materials, drainage is blocked. In view of the disputed facts which in my opinion cannot be ascertained without local inspection or without making local investigation and further considering the judgments passed by the various High Courts and the Hon'ble Supreme Court, the learned trial Court ought to have allowed the application moved by the plaintiff/petitioner under Order 26 Rule 9 of C.P.C."

In the case of **Bommireddy Tirupathi Reddy Vs. Dokka Kondamma and others** (2 supra), the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh has held as under:

"6. In the considered view of this Court, in the circumstances stated by the defendant, the appointment of a Commissioner would subserve the ends of justice, as, according to the defendant, the entire extent of A.3.00 cents of land of the defendant, out of which Ac.0.50 cents, which is included in the plaint schedule, is fenced with closed planted teakwood plantation as a hedge and that it is forming a boundary or fence and that the lemon trees in the entire garden,

which are in the entire Ac.3.00 cents of land, including the Ac.0.50 cents, which the defendant is claiming as his, are of the same age and that the physical features would establish the pleaded defence, which the defendant intends to establish to succeed in the suit. Be it noted that there is no hard and fast rule that in no suit for perpetual injunction, a commission shall be issued though it is true that a commission cannot be issued for ascertaining as to who among the parties is in possession, as such a function being a judicial function cannot be delegated. It is now well settled that appointment of a commissioner for noting down the physical features cannot be termed as collection of evidence. Further, the evidence, which the commissioner gathers by noting down the physical features of the properties, cannot otherwise be procured. If the Commissioner appointed makes a local inspection and notes down the physical features of the properties and files a report, the said report and the evidence he may give, based on his report, if he is examined before the trial Court, would perhaps enable the trial Court to better appreciate the other evidence that may be let in by the parties during the course of trial. In that view of the matter and for the above stated reasons, this Court finds that the defendant made out valid and sufficient grounds for issuance of a commission and that, therefore, the order impugned is liable to be set aside being unsustainable."

7. In the decision relied upon by the learned counsel for the respondents in the case of **Koduru Sesha Reddy Vs. Gottigundala Venkata Rami Reddy and others** (3 supra), it was held that in suits for perpetual injunction, appointment of a Commissioner to note down the physical features cannot precede the recording of evidence and the

parties have to adduce their evidence in support of their respective contentions as to possession and thereafter, the Court would be justified to appoint Commissioner, only if it feels that the evidence on record is not sufficient for recording a finding, for the purpose of granting or refusing the relief of injunction. In the said case, the trial is yet to commence and the Court has held that appointment of Advocate Commissioner at that stage was not justified. In the case before this Court also, the trial is yet to commence though the respondents have filed their written statement denying the existence of the Four Wheel Garage.

8. The judgment relied upon by the learned counsel for the petitioners in the case of **Bommireddy Tirupathi Reddy Vs. Dokka Kondamma and others** (2 supra) and also the decision relied upon by the learned counsel for the respondents in the case of **Koduru Sessa Reddy Vs. Gottigundala Venkata Rami Reddy and others** (3 supra) are both relating to the Hon'ble High Court of Andhra Pradesh and the decision in the case of **Bommireddy Tirupathi Reddy Vs. Dokka Kondamma and others** (2 supra) being the latest judgment and being decided in similar circumstances has to be followed.

9. In view of the same, the order dt.12.12.2022 in I.A.No.1078 of 2022 in I.A.No.866 of 2022 in I.A.No.616 of 2022 in O.S. No.1033 of 2022 on the file of the Principal Junior Civil Judge-cum-Judicial Magistrate of First Class at Jangaon is set aside and the Civil Court is directed to appoint an Advocate Commissioner from amongst the Advocates available and issue a warrant to the Commissioner with necessary directions and by fixing a date for submission of the report.

10. The Civil Revision Petition is accordingly allowed. No order as to costs.

11. Pending miscellaneous petitions, if any, in this CRP shall stand closed.

SD/-NAYANI CHANDRA SEKHAR RAO
ASSISTANT REGISTRAR

//TRUE COPY//

4/12/23
SECTION OFFICER

To,

1. The Principal Junior Civil Judge - cum - Judicial Magistrate of First Class at JANGAON.
2. One CC to SRI B. SHANKER, Advocate [OPUC]
3. One CC to SRI G. ANANDAM, Advocate [OPUC]
4. Two CD Copies

BB

BSR

HIGH COURT

DATED: 30/12/2022

ORDER

CRP.No.3053 of 2022



ALLOWING THE CIVIL REVISION PETITION
WITHOUT COSTS

6
notes
BSR