



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3333]

THURSDAY, THE EIGHTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SMT JUSTICE V.SUJATHA

CIVIL REVISION PETITION NO: 1918/2023

Between:

- 1.MUTHUKULLA MALAKONDAIAH, (DIED)
- 2.MUTHUKULLA @ MITHUKULLA VENGAIAH,, S/O LATE
MALAKONDAIAH AGED 47 YEARS, R/O D. NO. 7-987,
VALETIVARIPELM VILLAGE AND MANDAL, PRAKASAM DISTRICT.

...PETITIONER(S)

AND

- 1.MIRIYALA VICTORIYA, W/O VENKATESWARLU, AGED 40 YEARS,
R/O. D. NO. 2-436, NEHRU NAGAR EXTENSION, BESIDE POTHU RAJU
KALUVA, ONGOLE TOWN AND MANDAL, PRAKASAM
DISTRICT.
- 2.KUKATLA VENKATAIAH, S/O DEVADASU, AGED 30 YEARS, R/O. D.
NO. 2-437, NEHRU NAGAR EXTENSION, BESIDE POTHU RAJU
KALUVA, ONGOLE TOWN, PRAKASAM DISTRICT.
- 3.PAPABATTINA KASIAH, S/O. NOT KNOWN, AGED 45 YEARS, R/O.
D. NO. 2-438, NEHRU NAGAR EXTENSION, BESIDE POTHU RAJU
KALUVA, ONGOLE TOWN AND MANDAL, PRAKASAM DISTRICT.
- 4.AKKIDASU CHENCHAMMA, W/O SUBBAIAH, AGED 52 YEARS, R/O.
D. NO. 2-439, NEHRU NAGAR EXTENSION, BESIDE POTHU RAJU
KALUVA, ONGOLE TOWN AND MANDAL, PRAKASAM DISTRICT.
- 5.LAKKU CHENNA KESAVULU, S/O. CHENNAIAH, AGED 40 YEARS,
R/O. 5-789, NEHRU NAGAR EXTENSION, BESIDE POTHU RAJU

KALUVA, ONGOLE TOWN AND MANDAL, PRAKASAM DISTRICT.

6.THE TAHSILDAR, ONGOLE MANDAL, PRAKASAM DISTRICT.

7.MUTHUKULLA MITHUKULLA PITCHAMMA, W/O LATE MALAKONDAIAH, AGED 70 YEARS, R/O. D. NO. 6-54, VALETIVARIPELM VILLAGE AND MANDAL, PRAKASAM DISTRICT.

8.MUTHUKULLA MITHUKULLA SRINIVASA RAO, S/O LATE MALAKONDAIAH, AGED 46 YEARS, R/O. D. NO. 5-89/3, VALETIVARIPELM VILLAGE AND MANDAL, PRAKASAM DISTRICT.

9.MEESALA SUBHASHINI, D/O LATE MALAKONDAIAH, W/O VENKATA RAMAIAH, AGED 52 YEARS, R/O. D. NO. 4-90/5, PAMURU VILLAGE AND MANDAL, PRAKASAM DISTRICT.

...RESPONDENT(S):

Petition under Article 227 of the Constitution of India,praying that in the circumstances stated in the grounds filed herein,the High Court may be pleased to aggrieved by the Order dt. 13.06.2023 passed in I.A No. 116 of 2023 in O.S No. 485 of 2013 on the file of the court of Learned Principal Senior Civil Judge, Ongole

IA NO: 1 OF 2023

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 grant stay of all further proceedings in O.S No. 485 of 2013 on the file of the court of Learned Principal Senior Civil Judge, Ongole, pending disposal of the main CRP and to pass

Counsel for the Petitioner(S):

1.NIMMAGADDA REVATHI

Counsel for the Respondent(S):

1.

The Court made the following:

ORDER:

This Civil Revision Petition is filed under Article 227 of Constitution of India by the 2nd plaintiff in O.S.No.485 of 2013, aggrieved by the order dated 13.06.2023 passed in I.A.No.116 of 2023 in O.S.No.485 of 2013 on the file of learned Principal Senior Civil Judge, Ongole, whereby trial Court dismissed the application filed by the petitioner/2nd plaintiff under Order XXVI Rule 9 and Section 151 CPC seeking to appointed an Advocate Commissioner.

2. The deceased father of the petitioner No.2 herein filed O.S.No.485 of 2013 against respondents 1 to 6 seeking declaration of title over the plaint schedule property and for consequential delivery of vacant possession after removal of the constructions raised thereon by the defendants No.1 to 5. After his demise, plaintiffs 2 to 5 were brought on record as his legal representatives.

3. During the pendency of the suit, the 2nd plaintiff filed I.A.No.116 of 2023 under Order XXVI Rule 9 read with Section 151 CPC, seeking appointment of an Advocate Commissioner to visit the suit schedule property to note down the physical features and measure the suit schedule property with the assistance of the District Surveyor, Ongole and the said application was dismissed by the trial Court vide order 13.06.2023. Aggrieved by the said order, the present civil revision petition is filed.

4. When the matter came up for admission on 16.08.2023, this Court granted interim stay of all further proceedings in the suit.

5. Heard Ms.Nimmagadda Revathi, learned counsel for the petitioner. Though notice was served on the respondents/defendants, none appeared on their behalf.

6. Admittedly, the deceased father of the petitioner No.2 herein filed O.S.No.485 of 2013 seeking declaration of title over the plaint schedule property and for consequential delivery of vacant possession. In the said suit, the 1st respondent herein/1st defendant filed a written statement disputing both title and possession of the plaintiffs over the plaint schedule property. It was further stated that the father of the 2nd defendant was in possession to an extent of six gadies and that, subsequently, the 2nd defendant constructed a zinc sheet shed therein. The 3rd defendant was stated to have initially constructed a zinc sheet shed and later raised a terraced building in an extent of six gadies. The 4th defendant was stated to have constructed a zinc sheet shed, and the 5th defendant also constructed a zinc sheet shed in the suit schedule property. It was further pleaded that the Government had issued possession certificates recognizing the possession of the defendants; that the Municipality had assessed the property tax, and that electrical service connections were obtained by the defendants. Thus, it was contended that the defendants are in long, continuous and uninterrupted possession and enjoyment of the suit schedule property and have perfected their title by adverse possession.

7. It is not in dispute that the defendants have categorically denied the title and possession of the plaintiffs and have specifically contended that the plaint

schedule property is Government land over which they are in possession and that possession certificates were also issued by the Government in their favour. Thus, the very identity, nature and ownership of the suit schedule property is in serious dispute.

8. The trial Court dismissed the application filed by the plaintiffs No.2 to 5 mainly on the grounds that the suit is of the year 2013, issues were framed in the year 2017 and trial was also commenced on 06.03.2019. On that day, the petitioners/plaintiffs filed their chief affidavits and cross examination of PWs 1 and 2 was also completed on 11.02.2020. Thereafter, the matter was being adjourned from time to time for further evidence on the plaintiffs' side. From 18.02.2020 to 29.11.2022, PWs 2 to 4 were examined. Again, the matter was posted for further evidence on the plaintiffs' side. At that stage plaintiffs filed the aforesaid application at the belated stage in year 2023 seeking to appoint an Advocate Commissioner which would amount to collection of evidence. The purpose of appointing an Advocate Commissioner under Order XXVI Rule 9 CPC is to enable the Court to properly appreciate the factual aspects relating to identity, measurement, and physical features of the property. Merely because the application was filed at a later stage, it cannot be rejected, particularly when the dispute relates to the very identity of the property. Hence, the said reasoning of the trial Court cannot be sustained in law.

9. In support of this contention, learned counsel for the petitioner relied upon a judgment of the High Court of Judicature for the States of Telangana and Andhra Pradesh at Hyderabad in ***Shameem Begum vs. Vennapusa***

Chenna Reddy and another (2018(2) ALD 297, wherein it was held as follows:

“4. The impugned dismissal order of the lower Court, under a mistaken impression and without even reading properly the Order XXVI Rule 9 and Section 75 C.P.C., says the purpose of appointment of an Advocate Commissioner sought to note down the physical features regarding possession of property cannot be allowed as a party cannot be allowed to fish out evidence by appointment of a Commissioner. The lower Court did not even notice the distinction between fishing out information (which is not permissible) and collection of evidence (which is permissible). What is prohibited of fish out information by Commissioner is X or Y stated to him at the time of inspection A or B in possession and the like. It is not prohibited of apparently visible physical features (which is even collection of evidence).”

10. In the present case, the petitioner seeks appointment of an Advocate Commissioner only to record the physical features of the suit schedule property and to measure the same with the assistance of a Surveyor, which would help the Court for proper adjudication of the dispute, which would not cause any prejudice to the respondents. Therefore, the trial Court erred in dismissing the application only on the ground of delay and on the erroneous view that the appointment of an Advocate Commissioner would amount to collection of evidence.

11. In view of the above circumstances and principle laid down in the aforesaid decision, the civil revision is deserves to be allowed.

12. Accordingly, the Civil Revision Petition is allowed. The order dated 13.06.2023 passed in I.A.No.116 of 2023 in O.S.No.485 of 2013 by the learned Principal Senior Civil Judge, Ongole, is hereby set aside. The trial Court is directed to appoint an Advocate Commissioner to inspect the suit schedule property to note the physical features and measure the same with the assistance of the District Surveyor, Ongole and submit a report before the trial Court. There shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending shall stand closed.

Date: 18.12.2025
KGR

JUSTICE V.SUJATHA