



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

[3332]

WEDNESDAY, THE EIGHTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

CIVIL REVISION PETITION NO: 1224/2025

Between:

1. GORREPATI TEJANANDA REDDY, S/O. LATE APPIREDDY,
AGED ABOUT 47 YEARS, R/O. D.NO.8-52, ZP HIGH SCHOOL
ROAD, CHINAPARIMI (V), TSUNDUR (M), GUNTUR DISTRICT
NOW BAPTLA DISTRICT.

...PETITIONER

AND

1. KALLAM VIMALA, W/o. Nagireddy, Aged about 54 years,
R/o. Chinaparimi (V), Tsunduru Mandal, Guntur District, Now
Bapatia District.

...RESPONDENT

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 beg to present the Memorandum of grounds for Revision Petition aggrieved by the order passed in I.A.NO. 289 OF 2021 in O.S.No.53 of 2021 on the file of Principle Civil Judge (Junior Division) Tenali dated 03.03.2025 for the following among other

IA NO: 1 OF 2025

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.53 of 2021 on the

file of Principle Civil Judge (Junior Division) Tenali pending the Civil Revision Petition before this Hon'ble Court and pass

IA NO: 2 OF 2025

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 vacate the interim Order of stay dated 09-05-2025 made in LA. No. 1 of 2025 in C.R.P. No. 1224 of 2025 on the file of this Hon' ble Court and pass

Counsel for the Petitioner:

1.O UDAYA KUMAR

Counsel for the Respondent:

1.N SRIRAM MURTHY

The Court made the following:

ORDER:

Aggrieved by the order dated 03.03.2025 passed in I.A.No.289 of 2025 in O.S.No.53 of 2021 on the file of Principal Civil Judge (Junior Division), Tenali, the present Civil Revision Petition is filed.

2. The petitioner is the defendant and the respondent is the plaintiff in O.S.No.53 of 2021.

3. The plaintiff/respondent herein filed I.A.No.289 of 2025 under Order XXVI Rule 9 and Section 151 CPC duly praying the Court to appoint an advocate commissioner to visit the plaint schedule property and note down its physical features, including the existence of any paddy heap, the physical features of surrounding or nearby lands, existing crops and cart tracks, if any, and the existence of Manduru Donka on the eastern

side of the defendant's land and that there is no passage for the plaintiff except through the land of the defendant and to note such other features which are raised by the plaintiff. The said application has been opposed by the defendant/petitioner herein by filing counter contended that appointing an advocate commissioner amounts to collection of evidence and the same is impermissible under law, accordingly, prayed to dismiss the said application. The trial Court, after hearing parties, allowed the said application. Aggrieved by the said order, the present Civil Revision Petition is filed.

4. Heard learned counsel representing Sri O.Uday Kumar, learned counsel for the petitioner and the Sri G.Krishna Kireeti, learned counsel representing Sri N.Sriram Murthy, learned counsel for the respondent.

5. Learned counsel for the petitioner in elaboration to what has been raised in the grounds of the revision and the contents of the counter filed before the Court below submitted that the Court below erroneously allowed the application filed by the respondent and thereby appointed an advocate commissioner to note down the physical features. She further contended that the Court below failed to see the purport of Order XXVI Rule 9 in right perspective that seeking appointment of advocate commissioner to note down the physical features is nothing but gathering of evidence. It is well settled principle of law that for gathering of evidence, the advocate commissioner should not be appointed. In

support of his contention he relied on the judgement of the Madras High Court in ***Devaki v. P.Ganesan & Ors***¹, accordingly, prayed to pass appropriate orders.

6. On the other hand, learned counsel for the respondent while reiterating the contents of the affidavit filed in support of the application submitted that the reason for asking for appointment an advocate commissioner is to find out whether any cart track exists on the ground, to note the existence of paddy heaps, the physical features of the surrounding lands, existing crops and cart tracks, if any, and the existence of Manduru Donka on the eastern side of the defendant's land, as well as to verify whether there is any passage for the plaintiff except through the defendant's land. He further contended that these aspects cannot be substantiated by placing on record any material except by physical inspection. He further submitted that the suit is at the stage of letting DW3 evidence only, as such, the said application has been filed at appropriate stage and the Court below has rightly allowed the said application. No grounds have been raised or urged warranting interference of this Court, the Civil Revision Petition is liable to be dismissed, accordingly, prayed to dismiss.

7. Perused the record and considered the submissions made by the learned counsel for the parties.

¹ C.R.P(PD).No.1630 of 2017 and CMP.No.7706 of 2017

8. The petitioner is the defendant before the Court below. The respondent filed a suit in O.S.No.53 of 2021 on the file of Principal Civil Judge (Junior Division), Tenali, for declaration of right over plaint schedule property and consequential relief of mandatory injunction directing the defendant to remove the pillars laid in the plaint schedule property.

9. Admittedly, the suit is coming for DW3 evidence. At that stage, the plaintiff filed the present Interlocutory Application *vide* I.A.No.289 of 2025 for appointment of an advocate commissioner to visit and note down the physical features of the plaint schedule property and the surrounding lands, including the existence of paddy heaps, cart tracks, crops, and Manduru Donka on the eastern side of the defendant's land, and to verify the alleged absence of any passage except through the defendant's land. The said application has been opposed by the petitioner herein on the ground that it is nothing but gathering of evidence. The Court below, after hearing both the parties, allowed the said application observing that the advocate commissioner's report would be helpful to the Court to resolve the issue involved and further held that appointing an advocate commissioner would not amount to collection of evidence for the parties and further, no prejudice would be caused to the defendant/petitioner herein particularly as both the parties can file objections to the said report.

10. In the judgment relied by the petitioner the suit is for injunction restraining interference of the defendant from putting up any structure or construction preventing an easementary right in the common pathway of the suit schedule property. In the said suit, the plaintiff filed Interlocutory Application for appointment of advocate commissioner, which was dismissed by the Court below. In the said circumstances, the Madras High Court held that the existence of a pathway must be determined based on evidence, and that appointment of an Advocate Commissioner in the said circumstances would amount to collection of evidence and there is no dispute in that regard, accordingly, the Madras High Court allowed the Civil Revision Petition.

11. However, the facts and circumstances in the present case are entirely different. No evidence can be let in to show whether any cart track is available in the plaint schedule property or whether there are any existing paddy heaps. Unless physically verified on ground, certain things will not come into light.

12. In ***Donadulu Uma Devi vs. Girika Katamaiah @ Basaiah***², learned Single Judge of the Composite High Court held as follows:

“12. that when there is dispute or issue with regard to identity of a property in a litigation, it is necessary to appoint a Commissioner for localizing the property which may be even by taking necessary assistance from a qualified surveyor which will not amount to collecting evidence which is prohibited.”

² 2013 (1) ALT 548

12. Even otherwise, the said application has been filed in a declaration suit that too after the plaintiff let-in his evidence. When there is dispute with regard to nature of the property, it is necessary to appoint an advocate commissioner to note down the physical features. No doubt advocate commissioner could not be appointed for the purpose of verifying as to who is in possession of the property but in the present case, the reason mentioned for appointing an advocate commissioner would not amount to gathering of evidence. The Court below has rightly dealt with the application and further directed the advocate commissioner. If at all the petitioner has any grievance, he can file objections to the said report. No grounds are made out warranting interference of this Court and the Civil Revision Petition is liable to be dismissed.

13. Accordingly, the Civil Revision Petition is ***dismissed***. The Court shall duly consider the objections filed if any to the report of the advocate commissioner by the petitioner. There shall be no order as to costs.

As a sequel, miscellaneous applications, pending if any, shall stand closed.

JUSTICE RAVI CHEEMALAPATI

Date: 18th February, 2026
RKS