(2005) 2 ALD 811 : (2005) 2 ALT 695

Andhra Pradesh High Court

Case No: CRP No. 5551 of 2004

Golla Goda Alivelamma		APPELLANT
	Vs	
S. Venkateshwarlu and Another		RESPONDENT

Date of Decision: Feb. 11, 2005

Acts Referred:
Civil Procedure Code, 1908 (CPC) â€" Order 18 Rule 18

Citation: (2005) 2 ALD 811 : (2005) 2 ALT 695

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: T. Hanumantha Reddy, for the Appellant; K. Ranga Rao, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.
The petitioner filed O.S. No. 141 of 2004 in the Court of Junior Civil Judge, Kollapur against the respondents in

relation to an immovable property. She obtained an order of temporary injunction against the respondents. The respondents filed I.A. No. 306 of

2004 under Order 18 Rule 18 C.P.C. requesting the Court to undertake a personal inspection. It was alleged that taking advantage of the order of

temporary injunction, the petitioner herein is making constructions to prevent access to a public well. The petitioner resisted the application stating

that she has not undertaken any construction around the well and that she has taken steps only to prevent interference by the respondents herein.

An objection was raised as to the very maintainability of the petition.

2. On a consideration of the rival contentions of the parties, the trial Court found that it was not a case for undertaking inspection by the Court

itself. However, through its order, dated 14.10.2004, the Trial Court appointed an Advocate Commissioner to make local inspection of the suit

schedule property and to submit a report. The same is challenged in this revision.

3. Smt. Madhavi Devi, learned Counsel for the petitioner, submits that the inspection to be undertaken by a Judge in exercise of powers under

Rule 18 of Order 18 C.P.C. is very rare and it is only in exceptional cases, that too, when the Court itself is satisfied that such an inspection can be

undertaken. She also contends that the power under the said provision is to be exercised by the Court on its own accord and the parties to the

proceedings do not have any right to insist on such inspection. She urges that once the trial Court did not find it to be a fit case for undertaking

personal inspection, the only consequence ought to have been to dismiss the application and there did not exist any justification for appointing an

Advocate Commissioner.

4. Sri K. Ranga Rao, learned Counsel for the respondents, on the other hand, submits that it is in the discretion of the Court, either to conduct

inspection by itself or to appoint an Advocate Commissioner and no exception can be taken to the order under revision.

5. The respondents filed IA No. 306 of 2004 under Rule 18 of Order 18 C.P.C. A perusal of that provision discloses that it confers upon the

Court the power to inspect any property or a thing concerning which any question arises in the suit. Such inspection can be undertaken at any stage

of the suit. There is no indication in this rule that a party to the proceedings can insist the Court to undertake such inspection by filing an application.

The exercise is to be taken by the Court on its own accord and on being satisfied about the necessity. Therefore, the very filing of application

requesting the Court to undertake the inspection by itself cannot be said to be tenable.

6. Be that as it may, the trial Court entertained the application and recorded a finding that it is not a fit case for undertaking such inspection. The

matter ought to have ended there. The trial Court, however, proceeded to treat the application as one under Order 23 C.P.C. and appointed an

Advocate Commissioner. Though, sometimes it is permissible for the Courts to treat an application filed under one provision as the one under a

different provision, much would depend on the similarity of the object and nature of considerations in dealing with such applications. It cannot be

said that the purpose underlying inspection by the Court by itself under Order 18 C.P.C. and submission of a report by the Commissioner

appointed by the Court under Order 23 C.P.C. on the other hand are similar. By conducting an inspection by itself, the Court gains first hand

knowledge about the matter, and the observations made therein or findings recorded are not subject to any rebuttal. On the other hand, the report

submitted by an Advocate Commissioner is subject to objections raised by an aggrieved party and the report at the most constitutes one of the

materials to be considered. It cannot carry any conclusiveness with it.

7. In that view of the matter, the approach of the Trial Court in appointing the Advocate Commissioner in the instant case cannot be sustained. The

civil revision petition is accordingly allowed and the order under revision is set aside. There shall be no order as to costs.