

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY  
CIVIL REVISION PETITION No.4337 of 2015

Date:14.10.2015

**Between:**

Katragadda Beena,  
W/o Satya Sai

..... **Petitioner**

**And:**

Katragadda Sai Krishna,  
S/o Kumar Swamy

.....**Respondent**

Counsel for the Petitioner: Mr. Raavinutha VSR

Counsel for the Respondent: None appeared

The Court made the following:

**ORDER:**

This Civil Revision Petition arises out of order, dated 13.7.2015, in I.A.No.292 of 2015 in O.S.No.170 of 2002 on the file of the learned Principal Junior Civil Judge, Repalle.

The respondent has filed the above-mentioned suit for declaration of his title in respect of the suit schedule property based on a purported Will executed by one Katragadda Raja Ratnamba on 16.8.2000. After the evidence on the respondent's side is closed and during the course of evidence on the petitioner's side, she has filed the above-mentioned I.A. purportedly under Section 151 of the Code of Civil Procedure for appointing Advocate-Commissioner for recording the evidence of one Bethapudi Veeraiah-D.W-7, who is

residing at Vijayawada. This application having been dismissed by the lower Court, the present Civil Revision Petition is filed.

In support of her application, the petitioner has stated that she has already examined five witnesses, the evidence of one witness was eschewed and that the evidence of one more witness *viz.*, Bethapudi Veeraiah-D.W-7 is vital and he is unable to come before the Court and adduce his evidence. The lower Court in its order, by which this application was dismissed, has pointed out that initially, the petitioner averred that the proposed witness was residing at Shadnagar, Mahaboobnagar District and subsequently, the same was corrected as 'Vijayawada, Krishna District'. Besides pointing out this discrepancy, the lower Court has further observed that no medical evidence is produced by the petitioner in support of her plea that the proposed witness is unable to attend the Court.

Order-XXVI Rule-1 of C.P.C. empowers a Court trying the suit to issue commission for the examination on interrogatories of any person who is resident within the local limits of its jurisdiction and who is exempted from attending the Court or who is suffering from sickness or infirmity is unable to attend the Court. Under Rule-4 thereof, the Court may issue a Commission for the examination on interrogatories of any person who is resident beyond the local limits of its jurisdiction. The second proviso to the said Rule provides that a commission for examination of such person on interrogatories shall not be issued unless the Court, for reasons to be recorded, thinks it necessary to do so.

The affidavit filed by the petitioner is too vague to disclose the real reason for her seeking examination of the proposed witness on commission. Apart from the

serious discrepancy in the address of the proposed witness, the petitioner has failed to disclose the reason for the alleged inability of the proposed witness to attend the Court for giving evidence.

Ordinarily, it is desirable to record the evidence and in particular, cross-examination of the witnesses in the Court so that the demeanour of the witness will be observed by the Court. Therefore, a party cannot seek examination of a witness on commission without supported by strong reason and the Courts shall not order such appointment of Commissioner for recording the evidence for the mere asking.

In the instant case, the petitioner failed to assign proper reasons for appointment of Commissioner for recording the evidence of the proposed witness. Hence, I do not find any reason to interfere with the order of the lower Court and accordingly, the Civil Revision Petition is dismissed.

As a sequel to dismissal of the Civil Revision Petition, CRPMP.No.5751 of 2015 is dismissed as infructuous.

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*JUSTICE C.V.NAGARJUNA  
REDDY*

*14<sup>th</sup> October 2015*

*Note:*

*Registry shall place this file  
on administrative side before me.*

*B/o*

*DR*