

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

CIVIL REVISION PETITION Nos.1646 and 1746 of 2014

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COMMON ORDER:

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These two Revisions arise out of the same suit between the same parties. Therefore, these Revisions are disposed of by this common order.

2. Petitioner in both these Revisions is plaintiff. He filed the suit against respondent for a perpetual injunction restraining the respondent from interfering with his possession and enjoyment of the suit schedule property, which is said to be admeasuring Ac.2-36.25 cents out of Ac.3-94 cents in Sy.No.14/E3C in Guduru Gram Polam, Kadapa Mandal, Kadapa District.

3. It is the case of the petitioner that the suit schedule land forms part of the land obtained by his father in a partition which took place under a registered partition deed dt.15-07-1958. He alleged that the family of petitioner was resident of Ananthapur and taking advantage of their absence, the respondent started proclaiming in the village that he is going to grab the plaint schedule property since its owners are absent in the village. It is also alleged that respondent is politically strong and capable of managing the Revenue Authorities

and Police Department.

4. Written statement was filed by respondent denying the suit claim and contending that respondent had purchased an extent of Ac.0-64 cents in Sy.No.147/E2A in the same village under registered sale deed dt.02-02-1973 from the father of petitioner. He contended that the father of petitioner had lost his title and possession to the said extent from the said date since he sold the said land in favour of respondent and possession of the said property is with respondent only. He contended that the boundaries given in the plaint for the extent Ac.2-36 cents in Sy.No.147/E3C are invented and registered partition deed filed by petitioner shows that there are no common boundaries for the entire extent. He contended that the boundaries given in the plaint do not tally with the boundaries in the partition deed and therefore suit schedule property is not identifiable; that the petitioner cannot be allowed to claim the land of respondent as his own and seek relief of permanent injunction against respondent. It was also alleged that certain real estate agents enimical to respondent had brought the petitioner into picture and got the suit filed informing him that if petitioner obtains injunction orders in this suit, they would sell the land belonging to respondent under the cover of injunction order though the petitioner

had no land in the village area.

5. The petitioner filed I.A.No.807 of 2011 seeking appointment of an Advocate-Commissioner for localizing the suit schedule property and also fixing boundaries for proper adjudication of the dispute. This application was contested by respondent, but was allowed on 29-09-2011; and in the said order, it appears that the Court below also directed measurement of the land of respondent. The petitioner had filed I.A.No.222 of 2012 seeking police aid for execution of warrant of commission issued in I.A.No.807 of 2011 and the same was allowed on 13-03-2014.

6. The respondent questioned both these orders in C.R.P.Nos.3259 and 3260 of 2012 before this Court. This Court allowed the C.R.Ps. on 30-08-2013 and set aside the orders passed in both the I.As. with a direction that the prayer of the petitioner, to also fix the boundaries of respondent's land in Sy.No.147/E2A and note the physical features therein, is beyond the scope of the suit; and even if he is entitled to seek appointment of an Advocate-Commissioner, it can only be done in respect of the suit schedule property and not in respect of the land claimed by respondent, which is not the subject matter of the suit. It therefore remitted back both the I.As. to the Court below to pass fresh order.

7. In the meantime, it appears that the trial in the suit had concluded.

8. Post-remand, the trial Court dismissed both I.A.Nos.807 of 2011 and 222 of 2012. It opined that it is not a fit case to appoint an Advocate-Commissioner. It went into the merits of the claim set up by petitioner in the suit. It also considered the recitals in Ex.A-2 filed by petitioner and opined that as per Ex.A-2, father of petitioner got 'C' schedule property, an extent Ac.1-59 cents is shown as one plot with specific boundaries, an extent of Ac.1.78 cents is shown as another plot with specific boundaries apart from an extent of Ac.0-05 cents which is shown as different plot; and perusal of the schedules of the said extents indicate that there is no common boundary. It also went into the merits of the claim made by respondent that the father of petitioner had sold certain extents of land and that the actual extent available with petitioner is much less than what is shown by petitioner in the plaint.

9. Questioning this order passed by the Court below in I.A.No.807 of 2011, C.R.P.No.1646 of 2014 is filed.

10. As a consequence of dismissing I.A.No.807 of 2011, the Court below also dismissed I.A.No.222 of 2012 on 13-03-2014. This order is questioned by the petitioner in

C.R.P.No.1746 of 2014.

11. Heard Sri V.V.N.Narasimham, learned counsel for petitioner in both the Revisions and Sri P.V.Vidyasagar, learned counsel for respondent in both the Revisions.

12. The learned counsel for petitioner contended that the Court below erred in dismissing both I.A.Nos.807 of 2011 and 222 of 2012 and that while considering whether or not to appoint an Advocate-Commissioner to measure the petitioner's property, it is not proper to the Court below to go into the merits of the claim of the petitioner in the suit and express any opinion on it. He further contended that the appointment of an Advocate-Commissioner is necessary in the facts and circumstances of the case since it is the case of respondent that properties are adjacent to one and another and it is necessary to ascertain whether there is any overlap between the properties claimed by petitioner and property belonging to respondent.

13. The learned counsel for respondent, on the other hand, contended that appointment of an Advocate-Commissioner, in the facts and circumstances of the case, amounts to collecting of evidence by petitioner and the trial Court had committed no error in dismissing both the I.As. He further contended that since trial had

concluded, at this point of time an Advocate-Commissioner ought not to be appointed since it would delay the disposal of the suit.

14. I have noted the submissions of both sides.

15. Admittedly, I.A.No.807 of 2011 was filed by petitioner on

27-07-2011 shortly after the suit was filed in April, 2011. It is not as if the said application was filed belatedly. No doubt on account of challenge to the orders passed therein in the High Court in Revisions (vide C.R.P.Nos.3259 and 3260 of 2012), the consequent setting aside of the earlier orders passed therein and the remand again to the trial Court, there was delay in disposal of I.A.No.807 of 2011. This delay occurred on account of judicial process and neither party can be allowed to take advantage of same and contend that the arguments in the suit have concluded. A Division Bench

of this Court in **C.Veeranna Vs. C.Venkatachala**^[1] has held that even *ex parte* Advocate-Commissioner could be appointed and in **N.Savitramma and another Vs.**

B.Changa Reddy^[2], a learned Single Judge of this Court held that the question as to when a Commissioner could be appointed, should be within the wide discretion of the trial Court, and it cannot be said that no Commissioner

could be appointed before the issues are framed or the evidence is led. These two decisions had been followed by this Court in **Bandana Mutyalu and another Vs. Palli Appalaraju**^[3] and this Court held that in a situation where there is controversy as to identification, location or measurement of the land, local investigation should be done. Therefore, the objection by the learned counsel for respondent that at this stage of arguments, an Advocate-Commissioner cannot be appointed, is not tenable.

16. From the facts narrated above, it is clear that the petitioner is claiming land in Sy.No.147/E3C while the respondent is claiming land in Sy.No.147/E2A. The learned counsel for respondent stated that the property claimed by respondent is adjacent to the land claimed by petitioner. In this situation, in order to decide where actually the land claimed by petitioner is located and whether or not there is any overlapping with the land claimed by respondent, I am of the opinion that it is necessary to appoint an Advocate-Commissioner to identify the suit schedule property with the assistance of the Assistant Director of Land and Survey Records and fix its boundaries.

17. I am also of the opinion that the Court below, while deciding application for appointment of Advocate-

Commissioner in a suit for injunction, erred in going into the merits of case pleaded by petitioner. The merits can be gone into only after hearing arguments on both sides and no opinion can be expressed on merits while deciding such application. Therefore on this ground also, the order dt.13-03-2014 in I.A.No.807 of 2011 is unsustainable.

18. Consequently, C.R.P.No.1646 of 2014 is allowed and the order dt.13-03-2014 in I.A.No.807 of 2011 in O.S.No.211 of 2011 of the

IV Additional Junior Civil Judge, Kadapa is set aside and the said I.A. is allowed. It is made clear that both parties shall be entitled to submit work memos and documents they wish in support of their respective cases to the Advocate-Commissioner at the time of execution of warrant by him and the Advocate-Commissioner appointed by the Court below shall conduct a survey of the land claimed in the suit by the petitioner with the assistance of Assistant Director of Land and Survey Records, locate and fix up the suit schedule property and its boundaries.

19. Coming to C.R.P.No.1746 of 2014 arising out of the order

dt.13-03-2014 in I.A.No.222 of 2012, the said I.A.No.222 of 2012 had been filed alleging that when the Advocate-Commissioner appointed earlier in the Court below tried to

locate the suit schedule property survey number with a view to fix up the location of the suit schedule property, the respondent and his followers objected for survey and alleged that their land should not be measured. This allegation is no doubt denied by respondent. But having regard to the apprehension of the petitioner that there could be obstruction to the execution of warrant by the Advocate-Commissioner appointed in I.A.No.807 of 2011 and since only reason given in the order dt.13-03-2014 for dismissing I.A.No.222 of 2012 is the dismissal of I.A.No.807 of 2011, (which order has now been set aside in C.R.P.No.1646 of 2014), I.A.No.222 of 2012 is also allowed. Consequently, C.R.P.No.1746 of 2014 is also allowed.

20. Thus both the Revisions are allowed as above. No costs.

21. As a sequel, miscellaneous petitions pending if any, in these Revisions, shall stand disposed of.

JUSTICE M.S. RAMACHANDRA RAO

Date: 25-08-2015

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[\[1\]](#) 1958 ALT 792

[\[2\]](#) 1988(1) ALD 353

[\[3\]](#) 2013(6) ALT 26