

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

CIVIL REVISION PETITION No.1193 of 2015

ORDER:

This Revision is filed challenging the order dated 21-01-2015 in I.A.No.268 of 2014 in O.S.No.114 of 2014 on the file of VI Additional District Judge, Kakinada.

The petitioners herein are the defendants in the said suit.

The said suit had been filed by the respondents against them for recovery of a sum of money with interest.

In sum and substance, the case of the respondents was that the petitioners are the members of District Committee and had been managing the affairs of St.Thomas (C.S.I.) Church, Jagannaickpur, Kakinada from 2012. But without conducting elections, they are collecting monies and they should be made to account for the same. It is also alleged that certain trees in the Church premises were cut after obtaining permission from the Forest Department and the said amounts were also not accounted by the petitioners. It is also alleged that they were not maintaining proper accounts and passing receipts for donations paid by the members and visitors.

In the said suit, the respondents filed I.A.No.268 of 2014 under Order 26 Rule-9 C.P.C. to appoint an advocate commissioner to take entire records from the petitioners 2 to 6 and maintain the petitioners' Church accounts with the assistance of an account knowing person to safeguard the

interest of the 1st petitioner. Similar pleas were raised in the affidavit filed in support of the said application by the respondents as mentioned in the plaint.

This application was opposed by the petitioners, who alleged that the accounts of the Church had been audited regularly and there is no truth in the allegation that the funds of the Church were misused or the accounts were not properly maintained.

By an order dated 21-01-2015, the Court below allowed the said I.A. It referred to the allegations made by both parties against each other and held that the respondents were apprehending danger that the petitioners tampered the records by making alterations in the accounts and in order to safeguard the funds of the Church from being misused, it is essential to appoint an Advocate Commissioner to seize the records from the petitioners and prevent tampering of the same.

Challenging the same, this Revision is filed.

Learned counsel for the petitioners contended that the impugned order is totally without jurisdiction and that there is no such power conferred on the Court below to appoint an Advocate Commissioner to seize the account books in the possession of the petitioners. He relied upon the judgment of Supreme Court in

Padma Sen and another v. The State of Uttar Pradesh^[1].

In that case also, a suit had been filed for recovery of money

on the basis of a promissory note alleged executed by defendants in plaintiff's favour. The defendants apprehended that the plaintiff would fabricate his books of account with respect to the payments made by him and applied for seizure of account books of the plaintiff. The trial Court appointed Advocate Commissioner to seize the books of account. The Advocate Commissioner seized those books. The said order was confirmed by the High Court. The Supreme Court held that party has full right over his books of account and Court has no inherent power forcibly to seize its property. If it does so, it invades the private rights of the party. It also observed that a party is free to produce such documents or books in support of its case as may be relevant and a party can ask the help of the Court to have produced in Court by the other party such documents as it would like to be used in evidence and are admitted by that party to be in its possession. If a party does not produce the documents it is lawfully called upon to produce, the Court has the power to penalize it, in accordance with the provisions of the Code. The Court has further power to draw any presumption against such a party who does not produce the relevant document in its possession, especially after it has been summoned from it. Even in such cases where the Court summons a document from a party, the Court has not been given any power to get hold the document forcibly from the possession of defaulting party. It held that merely because the defendants apprehended that the plaintiff might make such entries in those account books which could go

against the case they are setting up in Court, their request to appoint Advocate Commissioner to seize account books really amounted to the Court's collecting documentary evidence, which the defendants considered to be in their favour at that point of time. It held that it is no business of the Court to collect evidence for a party or even to protect the rival party from the evil consequences of making forged entries in account books. It observed that if the plaintiff does forge entries and used forged entries as evidence in the case, the defendant would have ample opportunity to dispute those entries and to prove them to be forgeries. It declared that the Civil Court had no inherent power to pass the order appointing commissioner to seize the plaintiff's account books.

Learned counsel for the petitioners is not able to place before this Court any decision taking a contrary view.

Since above decision is binding on this Court, I am of the opinion that the Court below was not right in appointing commissioner to seize the account books in the custody of the petitioners and that said order itself is without any jurisdiction.

Therefore, the Revision is allowed and the order dated 21-01-2015 in I.A.No.268 of 2014 in O.S.No.114 of 2014 on the file of VI Additional District Judge, Kakinada is set aside; the seizure of any material by the Advocate Commissioner pursuant to the impugned order is declared illegal; the Advocate Commissioner/Court below is directed to return all

the material seized from the custody of the petitioners to the petitioners.

Consequently, miscellaneous Petitions, if any, pending in this Revision shall stand closed.

M.S. RAMACHANDRA RAO, J

17-08-2015,
nvl

[\[1\]](#) AIR 1961 Supreme Court 218