

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CIVIL REVISION PETITION NO.1773 OF 2015

DATED 1st SEPTEMBER, 2015

Between

Chittavajjula Pullamma and others

... Petitioners

and

Rallapalli Chalapathi Rao

... Respondent

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.1773 OF 2015

ORDER

The defendants in O.S.No.117 of 2010 on the file of the learned Principal Junior Civil Judge, Narsapur, West Godavari District, filed I.A.No.579 of 2014 therein under Order 26 Rule 10(3) CPC praying for re-entrustment of the warrant of commission to the Advocate Commissioner for visiting the suit schedule property again so as to note down and report the correct existing features. By order dated 30.01.2015, the trial Court dismissed the said I.A. Aggrieved thereby, they filed this revision under Article 227 of the Constitution.

The suit, O.S.No.117 of 2010, was filed for a permanent injunction restraining the defendants from trespassing into item 1 of the plaint schedule property and to remove the well situated therein. At the request of the plaintiff in the suit, an Advocate Commissioner was appointed to inspect the suit schedule property for noting down its physical features. Having carried out the commission, the Advocate Commissioner submitted his report. According to the respondent/plaintiff, the Advocate Commissioner gave an opportunity to both parties to file their work memos before carrying out the commission. Further, the petitioners/defendants filed objections to the Advocate Commissioner's report and also cross-examined him at length. After this exercise, the petitioners/defendants filed the present petition seeking re-entrustment of the warrant to him under Order 26 Rule 10(3) CPC.

Taking note of the fact that the aforestated provision of law vests the Court with the discretion to direct further enquiry if it was dissatisfied with the Commissioner's report, the trial Court opined that re-entrustment

of the warrant did not arise at the request of the petitioners/defendants. The trial Court accordingly dismissed the IA.

Sri Dasari S.V.V.S.V. Prasad, learned counsel for the petitioners/defendants, contended that the trial Court ought to have exercised power under Order 26 Rule 10(3) C.P.C. given the facts of the case. He placed reliance on case law to buttress his argument.

In **NALLABALLA LALITHA DEVI V/s. GUDDETI SURYANARAYANA**^[1], this Court affirmed that the report filed by the Advocate Commissioner during the suit proceedings was defective and accordingly upheld the appellate Court's power under Order 26 Rule 10(3) CPC to make good the lacuna in the said report by appointing a Commissioner for clarification purposes.

In **R. VIJAYUDU V/s. N. RAMACHANDRA REDDY**^[2], this Court held that it would be open to the Court, if for any reason, it is not satisfied with the proceedings of the Commissioner to direct further enquiry as it thinks fit. This Court further observed that in such course, it would be open to the Court to go to the extent of appointing a second Commissioner.

Again, in **SEEPALLY THIRUPATHI V/s. REPELLI MALLIKARJUN**^[3], this Court reiterated that appointment of another Commissioner by the Court would not arise unless reasons are recorded as to any deficiency or otherwise in the first report.

Per contra, Sri S.R. Sanku, learned counsel for the respondent/plaintiff, argued that the powers vested in the Court under Order 26 Rule 10(3) CPC can only be exercised if the Court itself came to the conclusion that there was a lacuna or shortcoming in the Advocate Commissioner's report. Learned counsel would contend that it is not for a party who has already filed objections to such report and cross-examined the Advocate Commissioner to invoke such powers. Learned counsel also relied on **R. VIJAYUDU**² to support his contention that it is

only if the Court is not satisfied with the proceedings of the Commissioner that further enquiry may be directed by it as thought fit.

It is clear from the legal provision that it is for the Court to initiate further enquiry in the event it is dissatisfied with the proceedings of the Commissioner, be it for any reason whatsoever. In the present case, it is conceded by both the learned counsel that the trial Court is yet to consider the report of the Advocate Commissioner on merits, though objections have already been filed thereto by the petitioners/defendants and the Advocate Commissioner has also been cross-examined. Therefore, the stage for exercise of powers under Order 26 Rule 10(3) CPC has not arisen. This Court therefore finds no reason to interfere at this stage. The order under revision is accordingly confirmed making it clear that the same shall not preclude the trial Court from taking recourse to the powers vested in it under Order 26 Rule 10(3) CPC in the event it is dissatisfied for any reason with the report of the Advocate Commissioner.

The Civil Revision Petition is accordingly dismissed subject to the above observation. Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

1st SEPTEMBER, 2015

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[\[1\]](#) 2000(5) ALT 435

[\[2\]](#) 2004(3) APLJ 22 (SN) = 2004(6) ALT 411

[\[3\]](#) 2006(4) ALT 23