

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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C.R.P. NO. 3510 of 2014

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Date of Judgment: 3.3.2015

Between:

Gunti Mutyala Devi

...Petitioner

And

Dr. Annu Venkata Sundara Rao and others

..Respondents

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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CRP No. 3510 of 2014

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ORDER:

Heard learned counsel for the petitioner as well as learned counsel for the respondents.

The petitioner, who is the plaintiff in O.S.No. 254 of 2007 on the file of Additional Senior Civil Judge, Ongole, filed IA No. 815 of 2007 seeking appointment of an advocate-commissioner to note down physical features of the suit schedule property and accordingly Commissioner

was appointed who visited the suit schedule property on 31.12.2007, but filed his report only on 16.6.2008 i.e., with a gap of six months. The petitioner states that in the interregnum first defendant constructed a building in plot No. C and those aspects were not covered by the report of said advocate-commissioner. Even otherwise, it is claimed by the petitioner that the advocate-commissioner failed to mention in his report several aspects which he noted at the time of executing the inspection, as he obviously missed those aspects in view of six months' delay in filing the report. The petitioner, therefore, filed another I.A.No. 455 of 2012 for appointment of a fresh advocate-commissioner again for the same purpose, which was opposed by the first defendant and dismissed by the trial Court under the impugned order, dated 28.8.2014. The trial Court rejected the present application of the petitioner primarily on the ground that a commissioner cannot be appointed for the second time for the same purpose in view of the ratio of decision of this Court reported in *Kushal Rao Vs. Shyam Rao* ^[1]. This revision petition is directed against the said order.

After hearing the learned counsel for the petitioner and the learned counsel for the respondents, I am not

persuaded to agree with the petitioner inasmuch as the validity of report of advocate-commissioner appointed in I.A.No. 815 of 2007 cannot be adjudicated at this stage and the trial Court can consider the said aspect while deciding the main suit. The report of advocate-commissioner appointed by the trial Court is already on record and appointment of second advocate-commissioner for the same purpose cannot be considered as specifically held by this Court in the aforesaid decision. However, the plaintiff being the *dominus litis* can lead any evidence she proposes to lead in the suit including her claim relating to the physical features of the suit schedule property. Her application for appointment of advocate-commissioner for second time was rightly rejected by the trial Court which calls for no interference.

For the reasons given hereinabove, the revision petition is dismissed along with miscellaneous applications, if any. No order as to costs.

VILAS V. AFZULPURKAR, J

Dt. 3.3.2015
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^[1] 1997 (1) ALT 93