

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.2161 OF 2014

—
DATED: 12.03.2015

—
—

Between:

K. Roja and another

.. Petitioners

And

P. Srinivasa Rao

.. Respondent

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION No.2161 of 2014

ORDER:

—

This civil revision petition by the defendants in O.S.No.334 of 2007 on the file of the learned V Additional Junior Civil Judge, Warangal, calls in question the order dated 03.04.2014 passed by the Court below in I.A.No.157 of 2014 filed by them in the said suit under Order XXVI Rule 9 C.P.C. seeking appointment of an Advocate Commissioner to identify the suit schedule property with the assistance of the Mandal Surveyor and to ascertain whether it is in Sy.No.189 of Enumamula Village, Hanamkonda Mandal, Warangal District, along with specified boundaries.

Perusal of the order under revision reflects that the Court below rejected the prayer of the defendants on the ground that it was premature as the defendants were yet to adduce evidence.

Sri C.V.V. Prasad, learned counsel representing Sri P.R. Prasad, learned counsel for the petitioners/ defendants, contended that the understanding of the Court below that his clients' petition was premature as they were yet to adduce evidence was erroneous in law. He placed reliance on the judgment of this Court in **Badana Mutyalu and another**

v. Palli Appalaraju^[1] .

Perusal of the said judgment discloses that upon a conspectus of earlier case law, this Court held that either party to the suit could seek appointment of a Commissioner even before the trial and in situations where there is a controversy as to identification, location or measurement of the land, local investigation should be done at an early stage so that the parties would be aware of the Commissioner's report and go to trial prepared.

In the present case, though the defendants did not adduce evidence at the time of filing of the petition, they had already filed their written statement and therefore, the dispute in the suit as to the location of the suit schedule property was clear. On one hand, the plaintiff claimed a right over the suit property which, according to him, existed in Sy.No.189 of Enumamula Village, while the claim of the defendants was that their property, purchased under a registered sale deed, was situated in Sy.No.188 of the village. The extents claimed by both parties were also different. In that view of the matter, appointment of an Advocate Commissioner would, in fact, aid the Court below in speedy and proper adjudication of the suit. Merely because the defendants were yet to adduce evidence, the Court below ought not to have rejected the petition on that short ground.

The order under revision is accordingly set aside and the matter is remitted to the Court below for appointment of an Advocate Commissioner in terms of the prayer of the defendants. The Court below shall fix a timeframe for submission of the report by the Advocate Commissioner so that further time is not wasted in this regard.

The civil revision petition is accordingly allowed.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

12th March, 2015

Note:-

Issue C.C. in three days.

B/o

IBL

[\[1\]](#) 2013 (5) ALD 376