

THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

MONDAY THIS THE NINTH DAY OF MARCH
TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE MR JUSTICE A.V.SESHA SAI

-
CIVIL REVISION PETITION No.88 of 2015

Between:
Kondam Bhaskar Reddy and another

.....
PETITIONERS

AND
Kudukala Ramulu @ Ramaiah

.....**RESPONDENT**

The Court made the following:

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CIVIL REVISION PETITION No.88 of 2015

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ORDER:

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Defendants in O.S.No.5 of 2013 on the file of the Court of the Senior Civil Judge, Sircilla, Karimnagar District are the petitioners in the present revision filed under Article 227 of the Constitution of India.

In the present revision, the challenge is to the order passed by the said Court dated 31.12.2014 passed in I.A.No.631/2014 filed by the petitioners herein under the provisions of Order 26 Rule 9 of the Code of Civil Procedure.

Heard Sri V.V.Ramana Rao, learned counsel appearing for the petitioners and Sri Praveen Kumar Veerjala, learned counsel appearing for the respondent and perused the material available on record.

The respondent herein instituted the suit for perpetual injunction in respect of the suit schedule property. In the said suit, defendants filed a written statement resisting the plaint averments. Defendants also filed I.A.No.631/2014 under Order 26 Rule 9 of Code of Civil Procedure, seeking appointment of an Advocate Commissioner for the purpose of making local inspection of the suit schedule property and for noting the physical features by drawing a sketch map. Resisting the said application filed by the defendants/petitioners herein, the plaintiff/respondent herein filed a counter. The learned Senior Civil Judge by way of an order dated 31.12.2014 dismissed the said application.

This revision calls in question the said order passed by the

learned Senior Civil Judge dismissing I.A.No.631/2014 filed by the petitioners herein under the provisions of Order 26 Rule 9 of Code of Civil Procedure. It is contended by the learned counsel for the petitioners that the order passed by the Court below is erroneous, contrary to law and is opposed to very spirit and objects of the provisions of Order 26 Rule 9 of Code of Civil Procedure. It is further contended by the learned counsel that had the contents of the affidavit filed in support of the application been considered from proper perspective, the order impugned in the present revision would not have emanated. It is further contended that if a Commissioner is appointed, it will be helpful for the Court below to arrive at a just and reasonable conclusion. It is also argued by the learned counsel that the appointment of the commissioner would facilitate the Court below to adjudicate the issue before it in an effective manner. It is also argued by the learned counsel that the reasons assigned by the Court below in the order under challenge are neither cogent nor convincing.

To bolster his submissions and contentions, the learned counsel appearing for the petitioners places reliance on the judgments of this Court in ***P.Pedda Saidaiah vs. T.Padmavathi***^[1], ***Mallikarjuna Srinivasa Gupta v. K.Sheshirekha***^[2] and ***Mohammed Mahmood Ali v. Municipal Council, Suryapet***^[3].

On the contrary, it is contended by the learned counsel, appearing for the plaintiff/respondent herein that the Court below is perfectly justified in passing the impugned order and there is no illegality nor any material infirmity in the order passed by the Court below and in the absence of the same, the present revision petition filed under Article 227 of the Constitution of India is not maintainable. It is further argued by the learned counsel that since there is no dispute with regard to the purchase of the property from the defendants, the

defendants cannot dispute the boundaries and cannot be permitted to make any statement contrary to the documentary evidence.

The learned counsel, appearing for the plaintiff/respondent herein, in support of his submissions and contentions, places reliance on the judgment of this Court in **G.Nagabhushanam v. T.Eswaramma**^[4],

In the background, now the issues, which this Court is called upon to answer in the present revision are;

1. Whether the order passed by the Court below which is impugned in the present revision is in accordance with the provisions of Order 26 Rule 9 of Code of Civil Procedure?
2. Whether the order under revision requires any correction by this Court under Article 227 of the Constitution of India?

A perusal of the material placed before this Court clearly and candidly discloses that the respondent herein instituted a suit for perpetual injunction in respect of the suit schedule agricultural lands. The suit schedule property consists of two items with common boundaries. It is also not in dispute that the respondent herein purchased the suit schedule property from the defendants only. In the written statement filed by the defendants, which is placed on record, it is stated that though the registered sale deed was executed in favour of the plaintiff to an extent of Ac.3.26 gts, the said extent would not lie within the boundaries as described in the said sale deed and no possession was delivered as per the boundaries in the sale deed and the 2nd defendant is in possession of the property. It is also stated that the land held by the 2nd defendant exists in between the land sold to the plaintiff and the land of one Muskam Bhoomaiah, and the land of

the 2nd defendant exists towards eastern side of the land sold to the plaintiff, touching the boundary line of one Muskam Bhoomaiah.

Coming to the affidavit filed in support of the present application in I.A.No.631/2014, it is stated that the suit schedule lands are not one piece of land, but they are different lands. Under the provisions of Order 26 Rule 9 of Code of Civil Procedure, Courts are empowered to appoint an Advocate Commissioner subject to certain limitations.

In the present revision, now it is required to be seen whether the Court below is justified in refusing to appoint an Advocate Commissioner and whether the reasons assigned by the Court below are sustainable for doing so, in the light of the judgments cited by the learned Advocates appearing for the petitioners and the respondent.

In ***P.Pedda Saidaiah vs. T.Padmavathi (1 supra)*** this Court in a suit for declaration of title and injunction directed appointment of an Advocate Commissioner to demarcate the land owned by the petitioners as well as the respondent with the help of the Mandal Surveyor as per the documents held by them with reference to the village map and tippons if available.

In ***Mallikarjuna Srinivasa Gupta v. K.Sheshirekha (2 supra)*** this Court in a suit which is also for declaration of title directed appointment of Commissioner in order to resolve the dispute between the parties and in order to do justice to both parties.

In ***Mohammed Mahmood Ali v. Municipal Council, Suryapet (3 supra)*** this Court while allowing the revision directed appointment of Commissioner by observing and by taking into consideration that there was dispute with regard to the boundaries.

Coming to the judgment cited by the learned counsel, appearing for the respondent - In ***G.Nagabhushanam v. T.Eswaramma (4 supra)*** this Court refused to grant such relief by holding that in a suit for injunction simplicitor, the only issue that

becomes relevant is, as to whether the party is in possession of the suit schedule property and whether the otherside is interfering with his/her possession. This Court further held in the said judgment that the appointment of Commissioner in suits for injunction, is a rare phenomenon and even where such Commissioners are appointed, it would be only for the limited purpose of clarifying the physical features of the suit schedule property.

In the instant case, as seen from the pleadings available on record, there is no dispute with regard to the boundaries mentioned in the registered sale deed. The dispute is only with regard to the extent of the land as mentioned therein.

A perusal of the order impugned in the present revision manifestly discloses that the learned Senior Civil Judge by meticulously and thoroughly considering all the issues and by taking into consideration the relevant provisions of the Indian Evidence Act and the judgment of this Court in **G.Nagabhushanam v. T.Eswaramma** (4 supra) refused to appoint an Advocate Commissioner. It is settled and well established proposition of law that unless the order impugned suffers from jurisdictional error and patent illegality, no interference can be made in exercise of the revisional jurisdiction under Article 227 of the Constitution of India.

In considered opinion of this Court, there is no such jurisdictional error committed by the Court below in the order under revision.

For the aforesaid reasons and having regard to the principles laid down in the above referred judgments, the Civil Revision Petition is dismissed. No order as to costs.

Pending Miscellaneous Petitions, if any, shall stand closed in consequence.

Date: 09.03.2015
Dsr

[\[1\]](#) 1997(5) ALT 818
[\[2\]](#) 2006(4) ALT 162
[\[3\]](#) 2008(5) ALT 797
[\[4\]](#) 2009(2) ALD 238