

***THE HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO**

+C.R.P. No.3718 OF 2015

% 12-02-2016

Vemunandana Ramakrishnam Raju

.... Petitioner

Vs.

\$ Darla Srinivas

.... Respondent

!Counsel for the petitioner : Sri Mangena Sree Rama Rao

Counsel for the Respondent : --

<Gist :

>Head Note:

? Cases referred:

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

CIVIL REVISION PETITION No.3718 of 2015

Between:

Vemunandana Ramakrishnam Raju

....Petitioner

And

Darla Srinivas

....Respondent

JUDGMENT PRONOUNCED ON : 12.02.2016

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

1. Whether Reporters of Local newspapers : **Yes**
may be allowed to see the Judgments?

2. Whether the copies of judgment may be : **Yes**
Marked to Law Reporters/Journals?

3. Whether His Lordship wishes to : **Yes**

see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

CIVIL REVISION PETITION No.3718 of 2015

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ORDER:

The petitioner herein is the defendant in O.S. No.89 of 2014 on the file of the learned III Additional District Judge, Bhimavaram, West Godavari District. The respondent herein filed the said suit for recovery of an amount of Rs.24,58,000/- from the petitioner herein. In the said suit, the Court *suo moto* appointed an Advocate Commissioner to mark the documents and record the evidence of plaintiff, by its order dated 16.07.2015. Challenging which, the present Civil Revision Petition was filed.

The relevant portion of the order reads as under:

“Whereas it is deemed requisite for the purpose of this suit an Advocate Commissioner be appointed to mark the documents and record the evidence of plaintiff by name Darla Srinivas, S/o. Bangaraih, Age: 40 Yrs., Business, R/o. Flat No.7, Dwaraka Homes, Srirampuram, Bhimavaram-2, W.G.Dt., you are hereby appointed as an advocate commissioner. The Advocate Commissioner is directed to issue notices to both parties before examination and you are permitted to take the relevant documents from the office.

Your fee is fixed at Rs.2,000/- (Rupees Two Thousand Only) tentatively payable by the plaintiff directly to you and you are directed to file the deposition along with report by **07.8.2015.**”

Order 26 of the Code of Civil Procedure (for short, ‘the CPC’) deals with commissions. Rule 1 of the said Order reads as follows:

- 1. Cases in which Court may issue commission to examine witness—**
Any Court may in any suit issue a commission for the examination on

interrogatories or otherwise of any person resident within the local limits of its jurisdiction who is exempted under this Code from attending the Court or who is from sickness or infirmity unable to attend it:

Rules 2, 3 and 4 of Order 26 CPC have to be read along with Rule 1. Rule 4A was introduced by way of amendment w.e.f. 01.07.2002 and it reads as follows:

4A. Commission for examination of any person resident within the local limits of the jurisdiction of the court:- Notwithstanding anything contained in these rules, any court may, in the interest of justice or for the expeditious disposal of the case or for any other reason, issue commission in any suit for the examination, on interrogatories or otherwise, of any person resident within the local limits of its jurisdiction, and the evidence so recorded shall be read in evidence.

A perusal of Rule 1 or Rule 4A of Order 26 CPC shows that the Court cannot appoint an Advocate Commissioner without assigning any reasons. A perusal of the impugned order does not show the reason, which prompted the lower Court to appoint an Advocate Commissioner for examination of the plaintiff. As per the cause title, the plaintiff is aged 40 years and he is a resident of Bhimavaram, within the jurisdiction of the lower Court.

In the circumstances, the impugned order passed by the lower Court on 16.07.2015 is set aside.

Accordingly, this Civil Revision Petition is allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this Civil Revision Petition shall stand closed.

A.RAMALINGESWARA RAO, J

12.02.2016

MVA