

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION No.2368 of 2016

ORDER:

This Revision, under Section 115 of the Civil Procedure Code, is preferred against the order passed by the II Junior Civil Judge, City Civil Court, Hyderabad in I.A. No.276 of 2015 in I.A. No.259 of 2013 in O.S. No.603 of 2001 dated 24.03.2016.

The petitioner herein is the tenant of a shop at Punjagutta leased out to him by the respondent herein. As he failed to vacate the premises, the respondent filed a suit seeking his eviction. The said suit was decreed, and the appeals preferred thereafter culminated in the Supreme Court upholding the order of eviction by order in SLP No.35052 of 2015 dated 16.12.2015. The Supreme Court, while declining to interfere with the order of this Court in S.A. No.1309 of 2007 dated 29.07.2015, granted the petitioner herein time to vacate the premises till 25.12.2016, failing which the petitioner was to be liable for contempt of the Supreme Court. The respondent herein, thereafter, filed an application seeking mesne profits, on a square feet basis, for the property which the petitioner continued to occupy. As the petitioner disputed the extent of the subject property under his occupation, the respondent filed I.A. No.276 of 2015 for appointment of an Advocate Commissioner to physically measure the suit schedule property.

By the order under revision, the Court below allowed the said application holding that, though the respondent herein could not place any document other than the sketch plan to substantiate her version that the suit schedule property admeasured 502.47 square feet, the main relief sought for was to ascertain the mesne profits; the suit as filed was not a suit for injunction, and there was no need for the Court to investigate the extent of the property; appointment of an Advocate Commissioner, in an application for grant of mesne profits, did not amount to gathering evidence; it was always open to the revision petitioner to disprove the version of the respondent herein during the course of enquiry; and for proper adjudication of the case, and to ascertain mesne profits in the locality where the suit

property was situated, appointment of advocate Commissioner, to note down the physical features, was very much essential.

Sri Ashfaq Ahmed, Learned Counsel for the petitioner, would submit that the Court below, having accepted the petitioner's contention that the respondent herein did not place any document other than the sketch plan to substantiate her version that the suit schedule property admeasured 502.47 square feet, erred in appointing an Advocate Commissioner; it is only in the case of a serious dispute regarding boundaries can an Advocate Commissioner be appointed; and appointment of an Advocate Commissioner cannot be permitted for gathering evidence. He would rely on **Arvind Kumar Agarwal v. Legend Estates (P) Ltd., Ranga Reddy District, Hyderabad**^[1] in this regard.

On the other hand Sri V.S.R. Anjaneyulu, Learned Counsel for the respondent, would submit that the suit for eviction had attained finality with the order of the Supreme Court; the dispute, in the present proceedings, related only to grant of mesne profits; as the petitioner had disputed the extent of the property, the Court below considered it necessary to appoint an Advocate Commissioner at the request of the respondent herein for measuring the subject property; and the petitioner's endeavour was only to avoid determination of mesne profits.

The fact that the respondent herein is the land lady, and the petitioner her tenant, is not in dispute as the entire proceedings, instituted for eviction of the petitioner, culminated in the order of the Supreme Court directing the petitioner to vacate the subject premises by 25.12.2016 on pain of contempt. In the application filed by the respondent herein, for grant of mesne profits, an application was filed by the respondent herein for appointment of an Advocate Commissioner. As the application, filed before the Court below, was for grant of mesne profits, and the petitioner herein had disputed the extent of the property in his occupation the Court below appointed an Advocate Commissioner to measure the property under the occupation of the petitioner herein. As the subject property is a shop, its measurements are required to determine the mesne profits, if the Court below were to be

satisfied that mesne profits should be granted on a square feet basis. As has been rightly noted by the Court below, it is always open to the petitioner herein to disprove the version of the respondent herein, with regards the extent of the property under his occupation, during the course of hearing of the proceedings before the Court below. The discretion exercised by the Court below in appointing an Advocate Commissioner does not suffer from any illegality necessitating interference in revision proceedings under Section 115 CPC.

Reliance placed by Sri Ashfaq Ahmed, Learned Counsel for the petitioner, on **Arvind Kumar Agarwal**¹ is misplaced. The observations made therein was in a suit for injunction. In the present case the relationship of landlord and tenant is established with the culmination of proceedings before the Supreme Court, and there is no dispute that the subject property is in the possession of the petitioner herein. The only dispute is with regards the area of the property under the occupation of the petitioner herein. The application for appointment of an Advocate Commissioner, in such circumstances, cannot be said to be an application filed to gather evidence. I see no reason, therefore, to interfere with the exercise of discretion by the Court below in appointing an Advocate Commissioner.

The Civil Revision Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

RAMESH RANGANATHAN, J

Date: 10.06.2016.

MRKR

^[1] 2015 (2) ALD 206