

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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CIVIL REVISION PETITION NOS.1786 AND 1825 OF 2016

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COMMON ORDER:

Both the civil revision petitions are filed questioning the orders dated 19.02.2016 passed in I.A.No.146 of 2014 in A.S.No.133 of 2014 and I.A.No.86 of 2014 in A.S.No. 134 of 2014 on the file of the VI Additional District Judge Sompeta, Srikakulam, appointing an Advocate Commissioner, on the application filed under Order 26 Rule 151 of C.P.C by the respective respondents in revision petitions to inspect and to localise the suit schedule property and property of the defendant in both the suits filed by one against the other claiming permanent injunction, based on their possession.

The revision petitioner before this Court in C.R.P.No.1786 of 2016 filed suit for permanent injunction and during pendency of the suit, an Advocate Commissioner was appointed vide order in I.A.No.259 of 1999 in O.S.No.59 of 1998. In pursuance of the directions issued in warrant of commission, the Commissioner filed his report. But, no objections were filed by either of the parties to the suit and the said report of the Advocate Commissioner was considered by the Trial Court in its judgment in paragraph 13.

Aggrieved by the decree and judgment in O.S.No.59 of 1998, the respondent herein filed appeal A.S.No.133 of 2014. I.A.No.146 of 2014 in A.S.No.133 of 2014 was filed and the said I.A. was allowed appointing an Advocate Commissioner to localise the suit schedule property and property of defendant with reference to revenue records and documents.

The respondent in C.R.P.No.1725 of 2016 also filed a suit for permanent injunction in O.S.No.57 of 1997 which was dismissed on

13.07.2007 by the Trial Court. Aggrieved by the decree and judgment, A.S.No.134 of 2014 is filed which is pending on the file of the VI Additional District Judge, Sompeta. In the said appeal, the respondent herein filed a similar application in I.A.No.86 of 2014 in A.S.No.134 of 2014 for appointment of an Advocate Commissioner and the Appellate Court ordered the application appointing an Advocate Commissioner to localise the suit schedule property and property of the defendant with reference to the revenue records and documents relied upon by both the parties and the Court also assigned a reason that there is an ambiguity as to who are in possession of the plaint schedule property and therefore, it is necessary to appoint an Advocate Commissioner. Thus, orders in I.A.No.146 of 2014 in A.S.No.133 of 2014 and I.A.No.86 of 2014 in A.S.No. 134 of 2014 are challenged in the two revision petitions on various grounds.

Learned counsel for the petitioner in C.R.P.No.1786 of 2016 contended that, when the petitioner did not file any objections on the Commissioner's report in I.A.No.259 of 1999 in O.S.No.59 of 1998, the same was accepted and acted upon by the Trial Court referring to the same in paragraph 13 of its judgment and the respondents are debarred from raising the contention that the Advocate Commissioner did not measure the property with reference to the documents and the second commissioner cannot be appointed unless the first commissioner's report is expunged.

The learned counsel, in support of his contention, placed reliance on the judgment of this Court in **Vemuri Siva Venkata Koteswara Rao vs. Jasti Bala Rama Krishna and another**^[1].

He also contended that the present petition is barred by the principles of *res judicata*, and in support the said contention, he placed reliance on the judgment rendered by this Court in **Chhabil Das vs. Pappu**^[2]. Finally, it is contended that the reasoning recorded by the

Appellate Court is not legal to appoint an Advocate Commissioner in a suit for permanent injunction.

Per contra, learned counsel for the respondent Sri A. Ravi Shankar supported the orders passed by the Trial Court in all respects.

Admittedly, both the suits were filed for grant of permanent injunction and to restrain the defendants therein from interfering with their peaceful possession. In the written statements filed by both the parties, they did not dispute the identity of the property. The boundaries and survey numbers in both the suit schedule property are one and the same and there is absolutely no dispute with the identity of the property. But the Trial Court appointed an Advocate Commissioner only on the ground that there was an ambiguity as to who are in possession of plaint schedule property and it is a relevant fact. Strangely, the Trial Court directed the Advocate Commissioner to localise the schedule property only but not to verify as to who is in possession of the property. Even, as per the judgment of this Court in **Vemuri Siva Venkata Koteswara Rao's case** the second Commissioner cannot be appointed unless the first Commissioner's report is rejected. The principle laid down in the above judgment is directly applicable to the present facts, since the Commissioner for the same purpose was appointed in I.A.No.259 of 1999 and filed his report after executing the warrant, as directed by the Court receiving work memos from the Advocates on record. Admittedly either of the parties filed their objections on the Commissioner's report and the same was accepted by the Trial Court. Based on the report, the Trial Court recorded a specific finding that the petitioner in both the revision petitions is in possession and enjoyment of the property and allowed the suits filed by the petitioners and the appeals are pending before the Appellate Court. No doubt, the power of appointing an Advocate Commissioner under Order 26 Rule 9 of Civil Procedure Code read with Section 151 C.P.C is purely discretionary and the Court has to

exercise its discretion judiciously. According to Section 75 Order 26, Court has discretion to appoint a Commissioner, but the discretion has to be exercised judiciously.

In the present facts, the scope of trial in both suits filed by the petitioner and the respondents is limited, since the suit is filed for permanent injunction where the parties are required to establish their possession and enjoyment of the property by filing necessary proof and by leading satisfactory evidence, when they failed to establish their possession as on the date of filing the suit and threat to infringe the legal right of the petitioner which gave rise to cause of action, the suit shall be dismissed.

In the present case, the Trial Court appointed an Advocate Commissioner for the same purpose of localising the schedule property and the Appellate Court also appointed an Advocate Commissioner for the same purpose, rejecting the earlier report filed in I.A.No.26 of 1998 in O.S.No.57 of 1997, but the reasons assigned by the Appellate Court is that Commissioner is required to be appointed to find out as to who is in possession. But contrary to the findings, a direction was given to the Commissioner to localise the suit schedule property in both the suits. Therefore, the finding recorded by the Appellate Court is not in consonance with the directions issued to the Commissioner and thus, the direction issued to the Commissioner is one and the same in the earlier applications in I.A.No.259 of 9 in O.S.No. 59 of 1998 and I.A.No.26 of 1998 in O.S.No.57 of 1997. Therefore, the order of the Trial Court is passed by exercise of irregular jurisdiction. Hence, this Court by exercising power under Article 227 of the Constitution of India can interfere with such orders under challenge, since the power of revision under Article 227 is supervisory in nature, this Court can interfere with the orders passed by the subordinate courts, only when the subordinate Courts have failed to exercise jurisdiction properly, transgressed the limits in passing

orders.

It is a well settled principle that the High Court can exercise supervisory power under Article 227 of Constitution of India, as held by the Apex Court in **State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afsan Guru**^[3], that under Article 227 of Constitution of India the High Court can interfere with the directions of the Subordinate Courts.

In the light of the law laid down by the Apex Court, it is abundantly clear that the Court can exercise its jurisdiction which is supervisory in nature.

In the present facts of the case, the Appellate Court exercised its jurisdiction illegally and appointed an advocate commissioner, contrary to the procedure, though there is no necessity to appoint such an Advocate Commissioner, as there was no dispute with regard to the identity of property in a suit for permanent injunction, apart from that a Commissioner cannot be appointed to collect evidence, i.e. who is in possession of the property.

Hence, the orders dated 19.02.2016 filed in I.A.No.146 of 2014 in A.S.No.133 of 2014 and I.A.No.86 of 2014 in A.S.No. 134 of 2014 by the VI Additional District Judge Sompeta, Srikakulam are hereby set-aside.

In the result, both the revisions are allowed.

Consequently, miscellaneous applications pending if any shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:15.07.2016

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^[1] 2002 (4) ALT 610

[\[2\]](#) 2007 (1) ALT 62 (SC)

[\[3\]](#) 2003 (6) SCC 641