

HON'BLE SRI JUSTICE RAMESH RANGANATHAN

CIVIL REVISION PETITION NOS.1099 OF 2016

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ORDER:

This revision, under Article 227 of the Constitution of India, is preferred against the order passed by the Principal Junior Civil Judge, Visakhapatnam in I.A. No.1612 of 2015 in O.S. No.275 of 2014 dated 29.12.2015.

The petitioner herein is the plaintiff in the suit. She filed I.A. No.1612 of 2015, under Order 26 Rule 9 CPC, for appointment of an Advocate Commissioner for the purpose of noting down the physical features of plaint 'A' and 'B' schedule properties, and the defendant property; to note down the projection of the defendant's construction along with the measurements of plaint 'A' and 'B' schedule properties; and to measure the properties of the defendants with the help of respective documents and with the assistance of the Mandal Surveyor.

By the order under revision, the Court below rejected the petitioner's request for appointment of an advocate-Commissioner on two grounds. Firstly that the application was filed belatedly and the petitioner had not approached the Court at the earliest point of time, and secondly that the Court had the power to appoint an Advocate Commissioner *suo motu*.

Order 26 Rule 9 CPC enables the Court, if it deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, to issue a commission to such person, as it thinks fit, directing him to make such investigation and to report thereon to the Court. While the power, under Order 26 Rule 9 CPC, can undoubtedly be exercised by the Court *suo motu*, it can also be exercised at the behest of a party to the suit by way of an application. The suit is of the year 2014 and, as the application was filed in the

year 2015, it cannot be said that the application, seeking appointment of an Advocate Commissioner, was not made at the earliest point of time and that it was belated.

Both the grounds which weighed with the Court below, in rejecting the application, do not merit acceptance. While Sri G. Rama Gopal, Learned Counsel for the petitioner, would justify the petitioner's application, for appointment of an Advocate Commissioner, on merits, it would be wholly inappropriate for this Court to take upon itself the task of examining whether, on the facts of the present case, appointment of an Advocate Commissioner is justified or not, as the Court below has not examined any of the contentions urged before this Court on merits.

Suffice it if the order under revision is set aside, the I.A. is restored to file, and the Court below is directed to decide the I.A. afresh and in accordance with law. The Civil Revision Petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. No costs.

RAMESH RANGANATHAN, J

Date: 07.04.2016.
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