

**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

**CIVIL REVISION PETITION No.4660 OF 2011**

**ORDER:**

This revision is filed under Article 227 of Constitution of India by the plaintiffs in O.S. No.245 of 2008, impugning the order of the learned XI Additional District & Sessions Judge, (FTC) Guntur, at Tenali in I.A. No.1165 of 2011 in O.S. No.245 of 2008 dated 28.09.2011 which petition is filed by 2<sup>nd</sup> defendant—Official Receiver of the District Court, Guntur against revision petitioners and 22 respondents.

2) Heard and perused the impugned order of the trial Court wherefrom the report of advocate commissioner herein, in which he was appointed to record the evidence of Official Receiver, it was held that the originals, if necessary, can be marked in the office of the Official Receiver when the attested copies are genuine that can be exhibited and no prejudice is being caused to respondents and leave was therefore accorded.

3) It is now impugning the same, present revision is filed contending that said order is against law, exceeding the jurisdiction vested and the learned Judge went wrong not only in appointing advocate commissioner without any application of party but also in receiving the documents after the evidence of 1<sup>st</sup> defendant, which causes great hardship and prejudice to the petitioners—defendants for they had no occasion to lead evidence with regard to the same earlier.

4) A Perusal of the Order 26 Rule 4 C.P.C speaks any Court may in any suit issue a commission, for examination on

interrogatories or otherwise of, a) any person resident beyond the local limits of its jurisdiction; b) any person, who is about to leave such limits before the date on which he is required to be examined in Court; and c) any person in the service of the Government, who cannot, in the opinion of the Court, attend without detriment to the public service. It is in fact the power of the Court and not even on application of party.

5) Further, the amended Rule 4A speaks that, 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.

6) Further a reading of Order XVIII Rule 4 (1) speaks ***in every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence: Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed along with affidavit shall be subject to the Orders of the Court and from Sub-Rule (2) the evidence (cross examination and re-examination) of the witness in attendance, whose evidence (examination-in-chief) by affidavit has been furnished to the Court shall be taken either by the Court or by the Commissioner appointed by it and while appointing a commission under this sub-rule, consider taking into account such relevant factors as it thinks fit.***

7) Further Order XVIII Rule 19 speaks ***notwithstanding***

***anything contained in these rules, the Court may, instead of examining witnesses in open Court, direct their statements to be recorded on commission under Rule 4A of Order XXVI.***

8) Thus, the amended provisions of the C.P.C supra, provides absolute power within the judicial discretion of any Court to *sue-motu* appoint the commissioner instead of recording by it, to record the evidence of any witness.

9) Even the provisions under Order XVIII Rule 4 referred supra, the Court or the Commissioner, as the case may be, shall record evidence and also requiring to record demeanour of any witness.

10) Now the contention is Commissioner could not have been appointed without application of the party, which contention in view of the provisions supra is unsustainable. Coming to receiving of the attested copies of the documents, the contention of it is required to produce original documents, if those are public documents within the meaning of Sections 74 to 77 of Evidence Act, the Court can receive and those can be exhibited subject to objection, if any. In fact, if at all, the originals are required to be produced, it is also observed by the Court that the originals are in the office of the Official Receiver and if necessary, those can be marked. In fact there are provisions either under Order XII Rule 8 for the plaintiffs to issue notice to the official receiver—2<sup>nd</sup> defendant to produce the originals before the Court or even to invoke Order XI Rule 14 CPC by filing application to produce originals before the Court for the purpose of verification even to mark the so-called attested copies, if those are totally in agreement with the originals. Thus, against the order impugned, there is nothing to interfere by sitting in revision.

11) Accordingly, the Civil Revision Petition is disposed of.  
No order as to costs.

12) As a sequel, miscellaneous petitions if any pending in  
this Civil Revision Petition shall stand closed.

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**Dr. B. SIVA SANKARA RAO, J**

**Dt.01.02.2016**  
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**HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

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Date:01.02.2016

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