

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.327 OF 2016

ORDER

This civil revision petition under Article 227 of the Constitution arises out of the order dated 14.12.2015 passed by the learned II Additional Junior Civil Judge, Tadepalligudem, in I.A.No.240 of 2015 in O.S.No.131 of 2009. The petitioners are the defendants in the said suit. They filed the subject I.A. under Order 26 Rule 9 CPC seeking appointment of an Advocate Commissioner, for a second time, to carry out measurements with the assistance of the Mandal Surveyor and to observe the physical features of the suit property, prepare a plan and file a report. By the order under revision, the trial Court dismissed the application.

Perusal of the order passed by the trial Court reflects that the Advocate Commissioner, appointed in the first instance, to make a local inspection and note the physical features of the suit schedule property, filed his report along with a plan and the petitioners/defendants filed objections thereto. Taking note of the said aspect, the trial Court opined that the petitioners/defendants would be at liberty to cross-examine the said Advocate Commissioner on the objections raised by them and bring out the real facts. Holding so, the trial Court dismissed the subject application.

Sri S.Subba Reddy, learned counsel for the petitioners/defendants, pointed out that as many as 11 objections had been raised against the report filed by the Advocate Commissioner.

Learned counsel would further point out that the dispute between the parties was primarily in relation to a passage but the Commissioner had failed to take measurements of the same.

It is no doubt true that the suit claim of the respondent/ plaintiff was for a permanent injunction not only in relation to the suit schedule site but also the passage shown in the plaint plan as ABCD. However, it is for

the respondent/plaintiff to prove his case before the trial Court. In furtherance of this endeavour, the respondent/plaintiff had filed the first application seeking appointment of an Advocate Commissioner and the consequent report to which the petitioners/defendants had already filed their objections. Admittedly, these objections are yet to be considered. As of now, it cannot be said that the trial Court has found the said report unsatisfactory. At such a stage, the question is whether the petitioners/defendants can seek a second commission.

It is a settled proposition of law that mechanical appointment of more than one commission should not be resorted to merely because the applicant would bear the costs, as such indiscriminate appointment of multiple commissions would create an unhealthy practice and lead to parties making such applications successively till they secure reports to their liking.

Sri S.Subba Reddy, learned counsel, placed reliance on ***M.RAMESH BABU V/s. M.SREEDHAR***^[1]. Therein, a Division Bench of this Court, while dealing with Order 26 Rule 10A CPC, observed that there is no bar to a second commission being appointed without the earlier commission's report being set aside but it would not be desirable to do so without valid reasons. The Bench was of the opinion that there should be special circumstances to resort to such a step and reasons must be recorded therefor.

This Court is of the considered opinion that the above decision does not further the case of the petitioners/defendants. A report of an Advocate Commissioner, in any event, is not binding on the Court. It is for the Court to strive to ascertain the truth and to take recourse to all measures deemed appropriate to reach this goal. In the event the trial Court, upon considering the objections raised by the petitioners/defendants, finds itself dissatisfied with the report of the first commission, it can always appoint a second commission. Having raised objections to the first commission's report, it is not open to the petitioners/defendants to straight away seek appointment of a second

commission without allowing the trial Court an opportunity to apply its mind to the first commission's report. The order under revision demonstrates that the trial Court was also of the same opinion. This Court therefore finds no reason to interfere with the order under revision.

The civil revision petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions shall also stand dismissed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

22nd MARCH, 2016

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[\[1\]](#) 2009(5) ALD 187