

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition Nos.4000 of 2015, 3954 of 2015 & 4035 of 2015

COMMON ORDER:

The revision petitioner in these three revisions is the sole defendant/respondent in (i) I.A.No.473 of 2014 in I.A.no.182 of 2014 in O.S.no.146 of 2014; (ii) I.A.no.472 of 2014 in I.A.no.187 of 2014 in O.S.no.148 of 2014; and (iii) I.A.No.490 of 2014 in I.A.no.180 of 2014 in O.S.no.144 of 2014 on the file of the learned II Additional Junior Civil Judge, Kurnool.

2. I have heard the submissions of the learned counsel for the petitioner and the learned counsel for the respondent. I have perused the material record.

3. The facts, which led to filing of these three revision petitions, may be stated as follows:

The plaintiffs/petitioners in the aforementioned three applications in the said three suits are different. However, the said plaintiffs in the said suits filed the said suits respectively for specific performance of respective agreements of sale. In the three pending suits, the three applications viz., I.A.Nos.182, 187 and 180 of 2014 are respectively filed by the respective plaintiffs for grant of temporary injunctions in respect of the schedule properties in the said suits. Pending enquiry in those applications, the first mentioned I.A.nos.473 of 2014, 472 of 2014 and 490 of 2014 are respectively filed by the plaintiffs for appointment of an advocate Commissioner to note down the nature of the plaint schedule properties in the respective suits.

Indeed, the appointment of a commissioner was sought to note down whether plaint schedule property in each suit is a hayrick yard or an agricultural land. The respondent/defendant had filed a counter resisting each of the said applications. The trial Court by a common order, which is impugned in these revisions, had allowed the petitions and appointed an Advocate Commissioner to inspect the respective suit schedule properties in

the three suits and note down as to whether the plaint schedule property in each suit is a hayrick yard or an agricultural land. Therefore, the aggrieved respondent/defendant had filed these revisions.

4. To begin with, it is necessary to refer to the pleadings of the parties, which are common. The case of the plaintiff/s in support of the request in the aforementioned three applications in the three suits for appointment of Advocate Commissioner for the aforesaid purpose, in brief, is this:

Each of the three suits is filed for specific performance of an agreement of sale and for consequential permanent injunction in respect of the plaint schedule property involved in each suit. The plaint schedule properties in the three suits are being used by the plaintiff/s as a hayrick yard. To prove the said fact, photographs are filed along with the plaints in the three suits. However, the respondent/defendant is claiming that the respective plaint schedule properties in the three suits are agricultural lands and that the suit schedule properties in all the three suits are parts of a huge extent of land in Sy.nos.211 to 219. Therefore, it has become necessary to seek appointment of a Commissioner to inspect the respective suit schedule lands in the three suits and to note down the nature of the respective suit schedule lands i.e., to note down as to whether the schedule land in each suit is a hayrick yard or an agricultural land.

5. The common defence of the respondent/defendant, who is resisting the applications filed for appointment of Commissioner in the three suits, in brief, is this:

The suit land in each of the three suits is an agricultural land and it is part and parcel of Ac.40.00 cents of land in Sy.Nos.211, 212, 213, 216, 218 and 219. The respondent/defendant did not sell any land to anybody and he is in possession and enjoyment of his land. The plaintiff/s in three suits has/have no semblance of right over the respective plaint schedule properties. The boundaries mentioned in the respective suit schedules are created. The photographs filed along with the plaints in the suits do not depict the reality. When the plaintiff/s in the respective suits are unable to prove their right over the respective suit schedule lands, the question of

proving possession by appointing a Commissioner is impermissible in law. The plaintiff/s in each suit is/are adopting illegal means to achieve indirectly what he/they could not achieve directly and the plaintiff/s is/are trying to fish out something by collecting some information under the guise of seeking appointment of an advocate commissioner to inspect the respective suit schedule lands. Appointment of a Commissioner for the desired purpose causes prejudice to the respondent/defendant. Having obtained *status quo* orders, the plaintiff/s in the three suits is/are adopting deceitful methods and dilatory tactics. All the three petitions filed in the three suits for appointment of Commissioner are liable to be dismissed.

6. At the hearing, before the trial Court, no oral and documentary evidence was adduced.

7. The learned counsel for the unsuccessful petitioner/defendant while reiterating the pleaded case would submit as follows: "The trial Court by a cryptic common order had erroneously allowed the applications and appointed the Advocate Commissioner in the suits for specific performance to note down the nature of the land though it is for the plaintiff/s in the respective suits to prove the pleaded case by adducing necessary oral and documentary evidence, but not by seeking the appointment of an Advocate Commissioner. The trial Court ought to have seen that appointment of an Advocate Commissioner was sought to gather evidence and that appointment of Commissioner for collection of evidence is impermissible under law. The trials in the suits have not yet commenced. Appointment of Commissioner is ordinarily made only when evidence adduced is not sufficient to effectively adjudicate the dispute. Therefore, the common order appointing the Commissioner is premature and is unsustainable under facts and law.

8. On the other hand, the learned counsel for the plaintiff/s i.e., the respondent/s in these revisions supported the orders of the Court below.

9. Dealing first with the aspect that the trial Court's order appointing the advocate commissioner even before the parties adduced evidence is

premature and the decision in **Papasani Sankara Reddy v. Kandula Hanumantha Reddy**^[1] on which reliance is placed, it is trite to note that in that cited case there was a pleading by the plaintiff that the defendant had occupied part of the public street and raised construction and that having regard to the facts of that case this Court held that unless plaintiff had relevant evidence in his custody he is not expected to file the suit and that even though Order XXVI Rule 9 CPC envisages appointment of an Advocate-Commissioner for elucidation of the matters in dispute, the Commissioner is ordinarily to be appointed only where the Court is of the opinion that available evidence is not enough to arrive at a proper and correct conclusion for the effective adjudication of the dispute involved in the suit. However, a Division Bench of this Court in **C. Veeranna v. C. Venkatachalam**^[2], had held that even ex-parte and without issuing notice to the other side, an Advocate-Commissioner can be appointed. Further in the decision in **Savitramma and another v. B. Changa Reddy**^[3], a learned Single Judge of this Court had held that it cannot be said that no Commissioner could be appointed before the issues are framed or evidence is led. In **Bandaru Mutyalu and another v. Palli Appalaraju**^[4] and **Jajula Koteswar Rao v. Ravulapalli Masthan Rao**^[5] this Court followed the ratios in the decisions cited (2 to 4 supra). Therefore, the contention that the order appointing a commissioner even before the evidence is let in is premature and hence, the said order is unsustainable has no merit.

10. Be it noted that the three suits are respectively filed for specific performance of respective agreements of sale in respect of the respective suit schedule properties. According to the plaint averments, the suit schedule properties in the respective suits are hayrick yards. According to the defence, they are agricultural lands being parts and parcels of a huge extent of agricultural land in different survey numbers. Since the defendant disputed the nature of the suit schedule land in each of the suits, the appointment of an advocate Commissioner was sought by the plaintiff/s to ascertain whether the

suit schedule land in each suit is a hayrick yard or an agricultural land. The trial Court appointed the Advocate Commissioner for the said purpose. The law is lucid that in any suit in which the Court deems that a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the Court may issue a Commission to any person as it thinks fit directing him to make an investigation and report to the Court. When there is a dispute about the nature of the land in each of the three suits and also about the use to which the respective lands in the three suits are being put to, the appointment of an advocate Commissioner to inspect the schedule lands in the suits and note down the nature of the said lands and the uses to which the lands are being put to, cannot be faulted and the appointment of Commissioner for the said purpose by no stretch of imagination can be called as an attempt to gather evidence. Viewed thus, this Court finds that there is no merit in the contentions of the revision petitioner/defendant.

11. Having regard to the aforesaid reasons, this Court holds that the order of the Court below is just and proper, in the facts and circumstances of the case, and that the said order does not brook interference.

12. In the result, all the three Civil Revision Petitions are dismissed. No costs.

Miscellaneous Petitions, if any, pending in these revisions shall stand closed.

M. SEETHARAMA MURTI, J

11th July, 2016
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[\[1\]](#) 2013 (5) ALT 40

[\[2\]](#) 1958 (5) ALT 792

[\[3\]](#) 1988 (6) ALT 353

[\[4\]](#) 2013 (6) ALT 26

[\[5\]](#) 2016 (1) ALT 134