

**HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**CIVIL REVISION PETITION Nos. 4688 & 4812 OF 2016**

**COMMON ORDER:**

1) Since both the C.R.Ps., are filed against the two orders in the same suit i.e., O.S.No.614 of 2010 on the file of the Additional Senior Civil Judge, Tirupati, they are being disposed of by this common order.

2) The respondents 1 to 3 herein, who are the plaintiffs in O.S.No.614 of 2010 filed the said suit to declare them as absolute owners of plaint 'B' schedule property and to direct the defendants in the suit to surrender vacant possession of the schedule property apart from seeking permanent injunction and damages against the defendants. In the said suit, a written statement came to be filed, opposing the same and also disputing the averments made in the plaint. Pending trial, two I.As., came to be filed i.e., I.A.No.758 of 2016 and I.A.No.759 of 2016. I.A.No.758 of 2016 is filed under Order XXVI Rule 9 and Section 151 of the Code of Civil Procedure (in short "C.P.C.") seeking appointment of an Advocate Commissioner to locate and take total measurements of shed No.1 mentioned in the plaint "A" schedule property and also plaint "B" schedule property and note down its survey numbers with the assistance of surveyor of A.P. Industrial Infrastructure Corporation Limited, Industrial Estate, Tirupati. Whereas I.A.No.759 of 2016 came to be filed under Section 151

C.P.C., to reopen the evidence of defendants so as to adduce further evidence of D-2 and D-3. Both the applications came to be rejected on 14.09.2016. Aggrieved by the same, these two C.R.Ps., are filed.

3) Learned counsel for the petitioners mainly submits that great prejudice would be caused to the petitioners/defendants, if they are not permitted to adduce further evidence. He submits that without giving any time to the petitioners, the Court below closed the evidence and posted the case for arguments. Having regard to the orders passed by this Hon'ble Court in C.R.P.5318 of 2011 he submits that the Court below ought to have given an opportunity to the petitioners to get the property surveyed. However, the same is opposed by the learned counsel for the respondents contending that though number of opportunities were given to the petitioners to adduce the evidence, they could not avail the same and as such indulgence by this Court at this stage is unwarranted. He further submits that the case is being adjourning only to delay the process.

4) As seen from the record, though the suit was filed in the year 2010, it was posted to 08.03.2016 for defendants' further evidence and after examining defendants 1 and 2, it got adjourned to 08.08.2016 for further evidence. Since the first defendant, who was representing the suit, could not attend the court to produce further evidence on his behalf, the trial court closed the evidence on that day and posted the matter for arguments. Immediately, thereafter i.e., on

12.08.2016 itself, the petitioners filed an application to reopen the evidence and to give an opportunity to adduce further evidence by examining D.W.3. Infact, the averments in the affidavit filed in support of the I.A., would show that on 12.08.2016 itself the chief-affidavit of D.W.3 is said to have been filed to show his bonafides. But strangely the matter got adjourned. It is his case that till date no arguments are advanced, which fact is not disputed by the learned counsel for the respondents.

5) Insofar as appointment of Advocate-Commissioner is concerned, it is to be seen that earlier the petitioners moved an application before this Court vide C.R.P.No. 5318 of 2011, which was dismissed on the ground that it was pre-mature and the necessity of appointment of an Advocate-Commissioner at that stage would not arise. Leaving it open to the petitioners to file an application for appointment of Commissioner after examination of respondents, the C.R.P. was dismissed. It was further observed in the said C.R.P., that the petitioners wanted appointment of Commissioner to measure not only the property of "B" schedule, but also the properties of another person, who is not a party, which is impermissible under law. The learned counsel for the respondents herein strongly opposed the application for appointment of an Advocate-Commissioner on the ground that it amounts to gathering of evidence. It is his case that whether the plaintiffs are owners of plaint "B" schedule property or

not can be decided by the evidence available on record and appointment of an Advocate-Commissioner is not necessary.

6) It is true that no orders are passed by the trial court in the I.A., filed for appointment of Commissioner to take measurements of "A" and "B" Schedule properties. It appears that since I.A.No.759 of 2016, which was filed to reopen the evidence of defendants, was dismissed, the court felt that it may not be necessary to pass orders in I.A.No.758 of 2016. But insofar as the reopening of the case is concerned, more particularly with regard to adducing of evidence in the form of D.W.3, it is to be noted that opportunities were given to the petitioners to adduce additional evidence. On 06.04.2016 D.W.1 was examined and on 12.07.2016 the cross-examination of D.W.1 was done. Thereafter, on 27.07.2016, the cross-examination of D.W.2 was done. On 03.08.2016 the counsel for defendants took time to produce further evidence and as such the case was adjourned to 08.08.2016. As there was no representation on 08.08.2016 the evidence of defendants was closed. As seen from the record, on 12.08.2016 itself an application came to be filed seeking reopening of the evidence along with the chief-affidavit of D.W.3. It cannot be said that the application filed to reopen the evidence was made long after the closure of the evidence.

7) Having regard to the above and since the arguments are not yet advanced till date, it would be just and proper to give an opportunity

to the defendants to lead evidence, as they have already filed the chief-affidavit of D.W.3 along with the application for reopening of the evidence. Hence, the defendants, who are the petitioners herein shall produce D.W.3 whom they intend to examine, on or before 10.11.2016 and the plaintiffs shall cross-examine D.W.3 on the said date. It is made clear that no further adjournments will be granted for production of D.W.3.

8) Insofar as the request of appointment a Commissioner for Survey, it is to be noted that this Hon'ble court in C.R.P.No.5318 of 2011 directed the petitioners to avail the remedies after the evidence of the respondents therein is closed i.e., after the closure of evidence of plaintiffs who were respondents in the said C.R.P. Without availing the remedy as directed by this Court, this application seems to have been filed at a belated stage i.e., after the examination of defendants 1 and 2.

9) Having regard to the above circumstances, C.R.P.No.4812 of 2016 is allowed, whereas C.R.P.No.4688 of 2016 is dismissed. No costs. As a sequel to it, miscellaneous petitions pending if any in these C.R.Ps., shall stand closed.

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**C. PRAVEEN KUMAR, J**

Date:31.10.2016

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