

THE HON'BLE SRI JUSTICE SANJAY KUMAR

CIVIL REVISION PETITION NO.4349 OF 2016

O R D E R

O.S.No.257 of 2016 on the file of the learned Additional Junior Civil Judge, Cyberabad, Kukatpally, was filed by the petitioner herein seeking a perpetual injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit schedule property, viz., the house bearing No.22-84/A Part in Sy.No.124 of Kukatpally Village, Eenadu Society, GHMC Kukatpally Circle, Balanagar Mandal, Ranga Reddy District. The suit schedule property was shown therein as an extent of 400 square yards.

I.A.No.551 of 2016 was filed in the said suit by defendant 1 under Order 26 Rule 9 CPC to appoint an Advocate-Commissioner to note down the physical features and to cause local inspection of the suit schedule property so as to know the real facts. By order dated 01.09.2016, the trial Court allowed the said I.A. and appointed an Advocate-Commissioner to note down the physical features and cause local inspection of the suit schedule property. Aggrieved thereby, the plaintiff filed the present revision under Article 227 of the Constitution.

By order dated 17.09.2016, this Court took note of the fact that the trial Court appointed an Advocate-Commissioner at the instance of defendant 1 to verify the post-suit construction allegedly being made by the plaintiff and accordingly granted interim suspension of the order under revision.

CRPMP No.7666 of 2016 was filed by respondent 1 herein, defendant 1 in the suit, to vacate the aforestated order.

Heard Sri P.Ganga Rami Reddy, learned counsel for the petitioner/plaintiff, and Sri Sudarshan Reddy Duddugunta, learned counsel for respondent 1/defendant 1.

It is conceded before this Court that even by the date of passing of the interim order in this civil revision petition on 17.09.2016, the Advocate-Commissioner appointed by the trial Court had executed the warrant of commission and submitted his report to the trial Court on 14.09.2016.

Sri P.Ganga Rami Reddy, learned counsel, would however contend that notwithstanding the above fact, this revision petition would survive for considering the validity of the order under revision, whereby the trial Court appointed an Advocate-Commissioner at the behest of defendant 1. Learned counsel would argue that this was impermissible in law as defendant 1 had not even filed his written statement in the suit and at that stage, he ought not to have been permitted to seek appointment of an Advocate-Commissioner. Reliance is placed in this regard on the order dated 06.09.2012 passed by this Court in **MUMMADI SUBRAMANYAM V/s. KATURU VENKATESWARLU¹**.

Per contra, Sri Sudarshan Reddy Duddugunta, learned counsel, would point out that the plaintiff filed I.A.No.440 of 2016 in the suit for a temporary injunction against the defendants pending the suit and his client had filed his counter-affidavit in the said I.A. on 26.08.2016. He would contend that the plaintiff is encroaching upon the area earmarked as a road and is making construction in violation of the permission granted by the municipal authorities. He would further contend that in these circumstances, his client was well

¹ Civil Revision Petition No.1883 of 2012 decided on 06.09.2012

justified in seeking appointment of an Advocate-Commissioner to note down the physical features and cause a local inspection of the suit schedule property so that the facts come before the Court. He would also assert that as the order has worked itself out owing to the Advocate-Commissioner executing the warrant and submitting his report, this revision has become infructuous.

Given the fact that the order under revision was already acted upon by the time this Court granted suspension thereof on 17.09.2016, the only question that survives for consideration is whether the entire exercise should be nullified at this late stage.

Perusal of **MUMMADI SUBRAMANYAM¹** relied upon by Sri P.Ganga Rami Reddy, learned counsel, would reflect that this Court found fault therein with the trial Court in appointing an Advocate-Commissioner at the behest of the defendants without having their pleadings before it. This Court observed that the defendants therein had not filed a written statement or counter-affidavit before the trial Court to substantiate their plea as against the plaintiff and without knowing the stand of the defendants, the Court below erroneously appointed an Advocate-Commissioner at their behest.

The case on hand, however, is distinguishable on facts as I.A.No.551 of 2016 was filed by defendant 1 on 31.08.2016, by which date he had already filed his counter in I.A.No.440 of 2016, the plaintiff's temporary injunction application pending before the trial Court. The stand of defendant 1 was therefore very much available before the trial Court. That apart, the trial Court also noted the fact that defendant 1 alleged that the plaintiff was making illegal construction by occupying the road area, which was denied by the plaintiff. As an *ad interim* injunction was already granted in favour of

the plaintiff and as it was alleged that under the guise of the protection afforded thereby, the plaintiff was occupying the road area while making construction, the trial Court concluded that no prejudice would be caused if an Advocate-Commissioner was appointed to verify the facts.

Given the facts, as set out *supra*, this Court finds no error in the trial Court appointing an Advocate-Commissioner to note down the physical features and cause a local inspection. No doubt, it is for the plaintiff to establish his own case but when there is a possibility of a *fait accompli* being presented to the Court, the interests of justice require that the trial Court take all possible measures to prevent any abuse of process. The order under revision, whereby the trial Court did so, therefore does not warrant interference on facts or in law.

The civil revision petition is devoid of merit and is accordingly dismissed. This order shall however not preclude the plaintiff from filing his objections to the Advocate-Commissioner's report in accordance with law. Interim injunction granted by this Court earlier shall stand vacated.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

27th JANUARY, 2017
PGS