

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION No.4862 of 2017

ORDER:

The Order in I.A.No.229 of 2017 in O.S.No.43 of 2010, dated 01.08.2017 passed by the learned IV Additional District Judge, Nellore is challenged before this Court.

2) Petitioner is the plaintiff in O.S.No.43 of 2010 and I.A.No.220 of 2017 came to be filed, invoking Order XXVI Rule 90 read with Section 151 of Civil Procedure Code, seeking to appoint an Advocate Commissioner to localize the S.No.1576/1009 and 1576/1012 and new S.No.597/1, 597/2, 597/4 on the land and note down the extent of the land in the New S.Nos.597/1, 597/2 and 597/4 on the land with the help of the District Surveyor. I.A.No.220 of 2017 was resisted by the respondents and the same came to be dismissed by a reasoned order.

3) Sri C. Subodh, learned counsel for the petitioner fervently submits that identity of the property on the land is essential to decide the issue in the suit and the same is not possible without the assistance of the District Surveyor. It is further submitted that the appointment of Advocate Commissioner is essential and no prejudice would be caused to the defendants, on the other hand, it would aid in resolving the dispute in issue.

4) Learned counsel for the petitioner also relied on the single Judge judgment of this Court in **Dammalapti Satyanarayana v. Datla Venakta Ramabhadra Raju @ D V R Raju**¹, particularly, wherein this court had held that even after the closure of the

¹ 2006 LawSuit (AP) 324

evidence even if the trial Court comes to the conclusion that if there is any overlapping of the property claimed by the petitioners on one hand and the respondents on the other hand, it can certainly consider the feasibility of appointment of Advocate Commissioner to identify or localize the suit schedule property with reference to the documents specifically indicated by the Court. In the light of the judgment of this Court, learned counsel prays for allowing of the Civil Revision Petition by setting aside of the impugned order of the Court below.

5) Having considered the submissions made by the learned counsel for the petitioner and also it may be noted that in the impugned I.A. the dispute is in relation to "A" schedule property, for which the petitioner filed suit seeking declaration of right and title and also recovery of the "A" schedule property. The reasons for filing I.A. seeking to appoint Advocate Commissioner is the defendants denial of the plaintiff's right over the property and the claim of the defendants is that they have purchased the same from one Sd.Abdul Gani Saheb and his daughter Syed Amthur Fathima Servarunnisa Begum. It is also the contention of the defendants that their properties are situated in Sy.No.1576/1009 corresponding to new S.Nos.597/1, 597/2, 597/4 and 598; and 1576/1012 corresponding to new S.No.599 and their properties are different from the suit schedule properties. The sum and substance of the arguments of the learned counsel for the petitioner is that there is a dispute with regard to identity of the property and the same can be resolved only through appointment of Advocate Commissioner for localization of the disputed properties with the help of Surveyor.

6) It may be noted that the lower Court had elaborately considered the submissions of the petitioner and held in the impugned order as under –

“8. the learned advocate for the respondents 1, 11, 12, 18, 19, 21 to 23 contended that the petitioner has to prove his own case by adducing necessary oral and documentary evidence and further contends that the respondents are not in occupation of the land of the petitioner and further contended that to gather evidence advocate commissioner shall not be appointed and hence there are no merits in the petitioner and further more advocate commissioner was already appointed at the time when suit was filed and he submitted report also and that both sides advanced evidence and the entire evidence is over, in the above case and the petition is filed at belated stage and there are no tenable grounds to allow the petition and prayed the Court to dismiss the petition.

9. Admittedly, this is the suit of the year 2010 vide No. 43/2010. Admitted the matter was coming up for arguments after adducing evidence and at this stage on 23.2.2017 this petition was filed after completion of evidence on both sides on 19.01.2017. It is settled Law that the petitioner can work out his remedies by seeking appointment of Commissioner at appropriate stage and after the petitioner started adducing evidence, as there is no likelihood of altering or changing physical features of the schedule property, since it is immovable property. Under the circumstances the appointment of advocate commissioner to localize the schedule property is not necessary for the present. It is also settled Law that Advocate Commissioner cannot be appointed for ascertaining as to who was in possession of the suit property on the date of suit. It is duty of the court to decide the same on the basis of oral and documentary evidence, that may be adduced by the parties, during the trial of the suit such function cannot be entrusted to the Advocate Commissioner (1998 (3) ALT 473 = 1998 (3) ALD 657). It is settled law that defence have not raised any dispute in the written statement regarding the identity of

the schedule property, hence there is no need for appointment of advocate commissioner (2001 AWR 1999). It is settled Law that advocate commissioner cannot be appointed to note-down the factum of trespasses by the party to the suit, if any. And it is the duty of the Court to decide the same on the basis of oral or documentary evidence i.e., adduced at the trial of the suit. In view of the settled principles, and considering the fact that it is the matter of the year 2010 after completion of evidence when the matter has been coming up for arguments, this petitioner filed this petition on 23.02.2017 with view to drag on the matter and the advocate commissioner cannot be appointed for ascertaining as to who was in the possession of the suit property and it is the duty of the court to decide the same on the basis of oral and documentary evidence that may be adduced by the parties during the trial. Both parties adduced evidence PW-1 and PW-2 and DW-1 to DW-17 and Ex.A-1 to Ex.A-15 and Ex.B-155 documents already marked. The petitioner / plaintiff also filed the documents obtained from revenue authorities under right to information Act. In view of the above circumstances, I find no force in the contentions of the learned advocate for the petitioner/plaintiff since it is filed at belated stage and consequently petition is liable to be dismissed.”

7) The above reasoning of the Court below hardly requires any reconsideration as there being no error either under law or on fact. As rightly observed by the learned Judge, in the event of the suit being decreed in the process of execution proceedings, the localization of the property can be done with reference to the judgment and decree, that being so when the suit is at the stage of arguments and at the belated stage the appointment of Advocate Commissioner is only to defeat and delay the matter and further it may be noted that the respective parties having completed adducing evidence, except in exceptional circumstances, which

would open for requiring the fresh evidence to be allowed. In view of the Order 18 Rule 17 of CPC, except in exceptional circumstances, the question of reopening of the closed evidence is impermissible. In the facts of the present case there being no circumstances this Court has seen no reason to interfere with the order of the Court below.

8) Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs.

9) Consequently, miscellaneous petitions pending, if any, shall also stand dismissed.

Date:15.09.2017
Ssv

CHALLA KODANDA RAM, J.

