

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CIVIL REVISION PETITION No.2221 of 2017

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, is filed by the unsuccessful petitioner/landlady assailing the order, dated 09.03.2017, of the learned IV Additional Rent Controller, City Small Causes Court, Hyderabad, passed in I.A.No.302 of 2016 in R.C.No.372 of 2011.

2. I have heard *Sri Kishore Rai*, learned counsel for the petitioner. I have perused material record. Though the respondents 2 to 12 are served and proof of service is filed, they have not entered appearance.

3. The facts, which are required to be stated as a prelude to this order, in brief, are as follows:

The petitioner claiming to be the landlady and owner of the case schedule property filed the eviction case (RC) against the 1st respondent. On the death of the 1st respondent, the other respondents, who are his legal representatives, were brought on record. They are resisting the eviction petition. In the pending eviction petition, the above-stated interlocutory application was filed for appointment of an Advocate Commissioner to visit the petition schedule property and note down its physical features and file a report. The said application was resisted by respondents 2 and 4 by filing a counter. By the order impugned in this revision, the learned Rent Controller dismissed the said petition. Therefore, the petitioner/ landlady is before this Court.

4. Learned counsel for the petitioner would submit as follows:
'Petitioner filed the eviction petition under Sections 10(2)(i) and 10(2)(v)

of the A.P. Buildings (Lease, Rent and Eviction) Control Act, 1960, for eviction of the 1st respondent and the same is coming up for arguments. The respondents 2 to 4, who are his legal heirs, are disputing the jural relationship between the parties. They are stating that they are in occupation of the premises no.17-3-534, situated at Yakut Pura, Bada Bazar, Hyderabad, but they are not in possession of the petition schedule property and that the said property in their possession is not part and parcel of the petition schedule property. The said respondents are also disputing the existence of electricity service connection given to the petition schedule property. Thus, there is a dispute as to whether the property in possession of the respondents 2 to 4 is part and parcel of the petition schedule property and whether any service connection is provided to the petition schedule property. Having regard to the pleadings of the parties and the issues that arise for consideration based on the pleadings and as the identity of the property as well as existence of service connection provided to it is being disputed, it is just and necessary to appoint an Advocate Commissioner for the purpose desired by the petitioner. It is necessary to establish as to whether or not the property, which is in possession of the respondents, is part and parcel of the petition schedule property and whether the electricity service connection, if any, is provided to the petition schedule property. If a Commissioner is appointed to visit the petition schedule property and note down its physical features and also the existence or otherwise of a service connection to the property and files a report, it would obviate the necessity of adducing voluminous oral evidence and such report of the Commissioner would constitute one more assured piece of evidence and the same would be of help to the learned Rent Controller in arriving at a just decision in the matter.'

5. Though the respondents have remained *ex parte*, before this Court their defence before the trial court is that there is no jural relationship and that the premises in their possession is not part and parcel of the petition schedule property.

6. The trial court by the impugned order while dismissing the petition of the petitioner *inter alia* observed in the impugned order that since the respondents are denying the jural relationship, it is for the petitioner to establish the said relationship and succeed on her own strength, but she cannot seek appointment of an Advocate Commissioner.

7. Having regard to the facts and submissions and the issues that arise for consideration in the matter, this Court is of the considered view that this is a fit case to appoint an Advocate commissioner for the purpose desired by the petitioner as the report, which the Commissioner may file after visiting the property, would be in the nature of an assured piece of evidence in the proceedings before the Rent Controller and would assist the learned Rent Controller in arriving at a just decision in the matter. If the report of the Commissioner, that may ultimately be filed, is to be considered along with the other evidence that may be brought on record during the course of trial, the whole evidence may ultimately help the Court of the learned Controller in knowing as to which of the two versions is true and in giving a quietus to the dispute once and for all. When there is a dispute about the identity of the properties, it is always necessary to appoint an Advocate Commissioner to note down the physical features as such a course would eventually help in identifying the property without leaving any room for any doubt at the time of execution of the decree in the event of ultimate success of the landlady in the matter.

8. Viewed thus, this Court finds that the learned Rent Controller is not justified in dismissing the petition of the landlady and, therefore, the order impugned is liable to be set aside.

9. Accordingly, the Civil Revision Petition is allowed and the order impugned is set aside and I.A.No.302 of 2016 in R.C.No.372 of 2011 on the file of the learned IV Additional Rent Controller, City Small Causes Court, Hyderabad, is hereby allowed without costs. Pursuant to the instant orders and on receipt of a copy of this order, the trial Court shall take up the said interlocutory application and appoint, as per practice and procedure, from the list of panel of Commissioners being maintained by it an Advocate Commissioner to visit the petition schedule property and note down its physical features and file a report. It is made clear that the Commissioner so appointed shall receive work memoranda, if any, that may be given by both the sides and file a report after answering the points in the work memoranda, which are relevant and which are within the scope of the warrant of commission.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M.SEETHARAMA MURTI

August 3, 2017

Note:-

Furnish copy by two days.

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