

**THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

**CIVIL REVISION PETITION No.386 OF 2017**

**ORDER:**

The civil revision petition is filed by the petitioner/plaintiff aggrieved by the order, dated 24.11.2016, passed in I.A.No.1682 of 2016 in O.S.No.361 of 2015 by the Court of the III Additional Junior Civil Judge, Kadapa, whereby the petition filed by the petitioner/plaintiff under Order XXVI Rule 9 of the Code of Civil Procedure (CPC) seeking appointment of Advocate Commissioner to localise the petition schedule property, demarcate and fix the boundaries with the assistance of Mandal Surveyor, Vallur Mandal, Kadapa District, was dismissed.

The petitioner/plaintiff filed the suit O.S.No.361 of 2015 for permanent injunction restraining the respondents/defendants from interfering with the peaceful possession and enjoyment of the suit schedule property, i.e., lands shown as ABCD in plaint plan, situated in Government Dry D.No.372/1 and 372/2 admeasuring Ac.2.60 cents, out of Ac.3.81 cents, with the boundaries specified in the plaint schedule. The plaintiff's case is that she is the owner of the plaint schedule property, which was originally belonged to plaintiff's mother late Komara Subba Lakshamma, who acquired the same by way of registered sale deed, dated 06.11.2000. After death of plaintiff's mother and father on 06.06.2011 and 18.03.2011 respectively, the plaintiff being the sole legal heir succeeded the suit schedule property. The respondents/defendants have been interfering with the possession of the plaintiff over the plaint schedule property since few days prior to filing of the suit and hence, the suit.

The respondents/defendants filed written statement opposing the suit, *inter alia* contending that there is no plaint schedule property existed

on the ground as alleged by the plaintiff. The other contentions are not of much importance at this stage.

The petitioner/plaintiff filed I.A.No.1682 of 2016 for appointment of advocate commissioner to localise the petition schedule properly, demarcate and fix the boundaries with the assistance of Mandal Surveyor, Vallur Mandal, Kadapa District. The trial Court by the impugned order dismissed the said petition on the ground that the appointment of advocate commissioner was sought for, for the purpose of ascertaining who was in possession and enjoyment of the petition schedule property and nothing else, and therefore, the application was not maintainable. Aggrieved, the instant civil revision petition is filed.

Heard learned counsel for the petitioner/plaintiff and learned counsel for the respondents/defendants and with their consent, the civil revision petition is disposed of at the admission stage.

The submission of the learned counsel for the petitioner/plaintiff is that the trial Court wholly misconceived the purpose of filing the petition for appointment of advocate commissioner and dismissed the same holding that the advocate commissioner cannot be appointed for the purpose of collection of evidence. He would argue that the petitioner/plaintiff has not sought for appointment of advocate commissioner for gathering evidence and in view of the defendants' plea in the written statement to the effect that the plaint schedule property with the description given in the plaint schedule is not existence, the petitioner/plaintiff was constrained to file the petition for appointment of advocate commissioner to localise the petition schedule property, demarcate and fix the boundaries with the assistance of the Mandal Surveyor, Vallur Mandal, Kadapa District. He would argue that the appointment of advocate commissioner for localization of suit property would not amount to gathering of evidence. He relied on the decision of the Supreme Court in **Shaik Zareena Kasam v Patan Sadab**

**Khan**<sup>1</sup> and prayed to set aside the impugned order and direct the trial Court to appoint an advocate commissioner.

Per contra, learned counsel for the respondents/defendants, while supporting the impugned order, would submit that since the suit is at the stage of beginning of trial and hence, the trial Court would be in a position to appreciate whether appointment of advocate commissioner was necessary or not only after the evidence is completed, and therefore, the petitioner may be directed to seek appointment of advocate commissioner at the end of trial.

Having gone through the respective averments in the plaint and written statement, copies of which are filed along with the material papers, and upon hearing both sides and upon perusal of the impugned order, this Court is of the view that the trial Court erred in holding that the petition was filed by the petitioner/plaintiff to gather evidence. The respondents/defendants specifically stated in paragraph 4 of the written statement, that there is no plaint schedule property existed on the ground as alleged by the plaintiff. In that view, the petitioner/plaintiff was constrained to file the petition for appointment of advocate commissioner to localise the suit schedule property, demarcate and fix the boundaries with the assistance of a Mandal Surveyor. The localisation of the suit schedule property by advocate commissioner with the assistance of the Mandal Surveyor would not amount to gathering evidence, as is held in **Shaik Zareena Kasam** (supra).

In the considered view of this Court, the trial Court ought not to have dismissed the petition on the ground of gathering evidence and that the request of the petitioner/plaintiff for appointment of an advocate commissioner for the purpose mentioned ought to have been considered. In view of the fact that the trial is at inception stage, the petitioner/plaintiff

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<sup>1</sup> 2011 (4) ALD 231

is at liberty to file a petition for appointment of an advocate commissioner for localisation of the plaint schedule property after trial is completed and the trial Court, upon considering the merits of such petition, shall appoint an advocate commissioner and give opportunity to both sides to submit their work memos, and upon the advocate commissioner answering the work memos, shall consider his report with reference to the evidence available before it and dispose of the suit on merits.

The civil revision petition is accordingly allowed and the impugned order, dated 24.11.2016, passed in I.A.No.1682 of 2016 in O.S.No.361 of 2015 by the Court of the III Additional Junior Civil Judge, Kadapa, is set aside.

Consequently, miscellaneous petitions, if any pending, shall stand disposed of.

17.02.2017  
pln



**U.DURGA PRASAD RAO, J**