

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**CIVIL REVISION PETITION No. 4939 of 2017**

**ORDER:**

This Civil Revision Petition is filed against the order, dated 16.08.2017 passed by the learned I Additional District Judge, Anantapuramu, dismissing E.A.No.32 of 2017 in E.A.No.24 of 2016 in E.P.No.85 of 2015 in O.S.No.103 of 2014, filed by the petitioner/claim petitioner under Order XXVI Rule 9 C.P.C. to appoint an Advocate Commissioner to inspect E.A. and E.P. schedule properties with the assistance of Town Surveyor of Anantapuramu Tahsildar's Office, to note down the physical features and topographical features and to take measurements and to file his report.

Respondent No.1/deed holder filed E.P.No.85 of 2015 in O.S.No.103 of 2014, seeking demolition of structures and delivery of possession. In the said E.P., the petitioner filed E.A.No.24 of 2016 under Order XXI Rule 97 C.P.C. read with Section 151 C.P.C. for setting aside the execution proceedings in respect of the property claimed by him. He also filed E.A.No.12 of 2017 in E.A.No.24 of 2016 to decide the maintainability of E.P. as preliminary issue. The Court below dismissed the said E.A. *vide* order, dated 31.03.2017. Challenging the same, the petitioner filed C.R.P.No.2413 of 2017 and this Court dismissed

the same vide order, dated 30.06.2017, directing the Court below to decide E.A.No.24 of 2016 uninfluenced by the observations made in the order, dated 31.03.2017. Thereafter, the petitioner filed E.A.No.32 of 2017 in E.A.No.24 of 2016. The Court below dismissed the said E.A. by the impugned order observing that appointment of Advocate Commissioner would amount to gathering of evidence, which is impermissible, and it is nothing but an effort to delay the proceedings in E.P.

Sri M. Mehdi Hussain, learned counsel for the petitioner, would submit that this Court in **Jajula Koteswar Rao v. Ravulapalli Masthan Rao**<sup>1</sup>, categorically held that for effective determination of the *lis*, it is not impermissible for appointment of an Advocate Commissioner even though it amounts to gathering of evidence. He would also submit that the petitioner had filed affidavit-in-chief in E.P.

Sri C. Adishesha Reddy, learned counsel for respondent No.1, on the other hand, would submit that the petitioner has been resorting to filing one petition or the other to delay the proceedings in E.P. He would further submit that E.A.No.32 of 2017 is premature, as the petitioner had not taken any step to adduce evidence in E.P. He would also submit that after perusing the evidence, if the Court feels that the parties have failed to

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<sup>1</sup> 2015(6) ALD 483

establish their respective specific stands particularly, in relation to the identity of the property, it may consider the appointment of Advocate Commissioner and that as the petitioner had not taken any step for adducing evidence, the Advocate Commissioner cannot be appointed. Therefore, the Court below rightly passed the impugned order imposing exemplary costs on the petitioner.

In E.P. proceedings, the petitioner has to establish that the property, which is sought to be put to auction, is his exclusive property, and altogether, he cannot be denied his right, by all means, to establish the identity of the property. Admittedly, the petitioner had already filed the affidavit-in-chief. It is for the petitioner to adduce evidence to establish that there is a triable issue, and in the event of any necessity, he can seek appointment of an Advocate Commissioner.

In those circumstances, interests of justice would be served if liberty is given to the petitioner to approach the Court below, at an appropriate stage, seeking appointment of Advocate Commissioner/Surveyor, if necessary, after adducing evidence, which would also help the Court below in deciding E.P. proceedings.

Therefore, the Civil Revision Petition is disposed of, giving liberty to the petitioner to approach the Court below by filing an Application stating justifiable reasons for appointment of an

Advocate Commissioner/Surveyor, if necessary, after adducing evidence. On such Application being filed, the Court below shall consider the same without regard to the order impugned in the present Civil Revision Petition.

Learned counsel for respondent No.1 would submit that his client would not insist for payment of costs awarded by the Court below. In view of the same, the impugned order to the extent of imposing costs on the petitioner is hereby set aside.

Miscellaneous petitions, if any, pending in this revision shall stand closed. There shall be no order as to costs.

**CHALLA KODANDA RAM, J**

Dt:24.11.2017

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