

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh

Writ Petition No.6471 of 2017

Between:

Gautam Chand Chordia and 6 others

... Petitioners

and

Smt.Majida Hasany and 8 others

...Respondents

Date of Judgment Pronounced: 01-03-2017

Submitted for Approval:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Smt Justice T.Rajani

1. Whether Reporters of Local newspapers may be allowed to see the judgments ? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Their Ladyships/Lordship wish to see the fair copy of the Judgment ? Yes/No

(C.V.Nagarjuna Reddy, J)

(T.Rajani, J)

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SMT T.RAJANI

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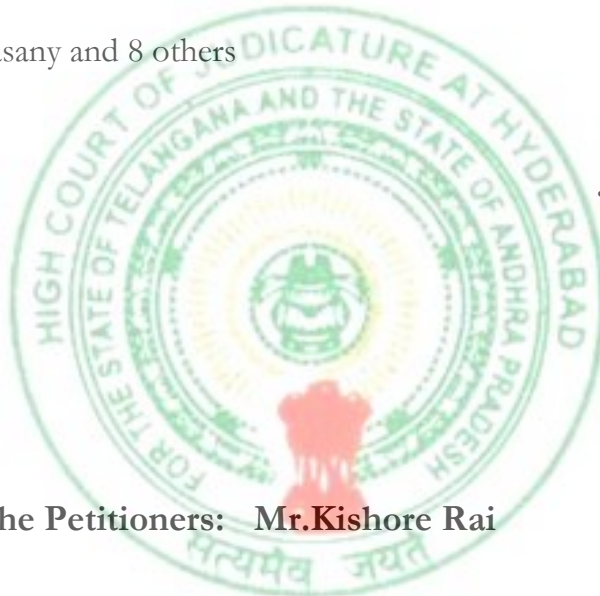
> Head Note:

! Counsel for the Petitioners: Mr.Kishore Rai

^ Counsel for the respondent: Mr.V.Eswaraiah Chowdhary

? Cases Referred:

NIL



The Hon'ble Sri Justice C.V.Nagarjuna Reddy

And

The Hon'ble Smt. Justice T.Rajani

Writ Petition No.6471 of 2017

Date: 01.03.2017

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... Respondents

Counsel for the Petitioners: Mr.Kishore Rai

Counsel for the respondent: Mr.V.Eswaraiah Chowdhary

The Court made the following:



Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Petition is filed assailing the validity of Order, dated 10-02-2017, in IA.No.187 of 2016 in LGOP.No.263 of 2017 (for short 'the impugned order') on the file of the II Additional Chief Judge, City Civil Court, Hyderabad (for short 'the lower Court').

We have heard Mr.Kishore Rai, learned Counsel for the petitioners, and Mr.V.Eswaraiah Chowdhary, learned Counsel for respondent Nos.1 to 6.

Respondent Nos.1 to 6 have filed the aforementioned IA under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 (CPC) for appointment of an Advocate-Commissioner to fix the boundaries and to note down the physical features of the petition schedule property with the assistance of the Deputy Director of Survey. This Application was allowed by the lower Court by the impugned order.

The main grievance of the petitioners is that before allowing the Application of the respondents, the Court below has not put them on notice.

A perusal of the impugned order does not show that the lower Court has ordered notice to the petitioners and heard them before appointing the Advocate-Commissioner for fixing the boundaries and noting down the physical features of the property in dispute with the assistance of the Deputy Director of Survey.

Mr.V.Eswaraiah Chowdary, learned Counsel for respondent Nos.1 to 6, has submitted that though his clients have filed the Application along with LGOP on 07-11-2016, the same was numbered subsequently and that on the Application being moved out of order on 31-01-2017, the same was entertained and the impugned order was passed on 10.02.2017 by the lower Court. He has conceded that before passing the impugned order, the lower Court has not issued notice to the petitioners.

Though Order XXVI Rule 9 CPC., *per se* does not envisage notice to the opposite party, in our opinion, the order containing unilateral direction without notice to the other side is perceived as somewhat unusual and contrary to the convention and practice, for, it cannot be said that an Application for appointment of an Advocate-Commissioner for noting down the physical features of the property and fixing the boundaries does not brook delay in issuing notice to the other side and hearing them. Further, the Court shall not appoint a Commissioner as a matter of course

unless it is satisfied that the ingredients of Order XXVI Rule 9 CPC are satisfied. The Court can arrive at proper satisfaction in this regard only if it hears both sides. Even if the Court is satisfied that the circumstances, which warrant appointment of a Commissioner, exist, it must necessarily speak its mind through its order. The lower Court has neither issued the notice to the respondents nor assigned any reason whatsoever for appointment of an Advocate-Commissioner *ex parte*. This approach of the lower Court cannot be appreciated and the impugned order therefore, cannot be sustained.

For the aforementioned reasons, the impugned order is set aside and the lower Court is directed to hear both sides and pass a speaking order afresh.

The Writ Petition is allowed accordingly.

As a sequel, WPMP.No.7905 of 2017, filed by the petitioners for interim relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(T.Rajani, J)

Dt: 1st March, 2017

Note:

LR Copies to be marked.

B/o

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