

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

+ C.R.P.Nos.4439 & 4440 Of 2017

% Date: 10-10-2017

Between:

Lella Seetha Ravamma
W/o. late L.V. Satyanarayana,
R/o. D.No.8-169, Prasadampadu Village,
Vijayawada Rural Mandal, Krishna District.

... Petitioner/plaintiff
(in both the revisions)

And

Seelam Veera Naga Ratna Kumari,
W/o. Kotaiah @ Satyanarayana,
R/o. D.No.8-168, Prasadampadu Village,
Vijayawada Rural Mandal, Krishna District.

... Respondent/defendant
(in both the revisions)

! Counsel for the petitioner : Mr. T.N.M. Ranga Rao.

^ Counsel for Respondent : Mr.

< GIST:

> HEAD NOTE:

? Cases referred

¹ JT 2000 (7) SC 379

¹ 2014 (4) ALD 1 (DB)

¹ 2015 (1) ALD 427

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

CIVIL REVISION PETITION NOS.4439 & 4440 Of 2017

COMMON ORDER:

The plaintiff in a suit for declaration of title has come up with the above revision petitions, challenging two independent orders passed on the same day by the trial Court dismissing one application for appointment of Advocate Commissioner and another application for marking the Xerox copy of a document, which is claimed to be the link document to the title deed of the defendant to a property.

2. Heard Mr. T.N.M. Ranga Rao, learned counsel for the petitioner.

3. The petitioner filed a suit in O.S.No.1306 of 2013 on the file of the I Additional Senior Civil Judge, Vijayawada, praying for a decree of declaration that she is the absolute owner of a passage shown in the plaint plan, providing ingress and egress to reach the panchayat road and for a consequential decree of permanent injunction restraining the defendant from obstructing the use of the passage by the plaintiff. To be precise, the dispute between the petitioner and the respondent is only with respect to a passage of a width of 7.6" and length of 41.6" on the Northern side of the house belonging to the petitioner.

4. The respondent filed a written statement claiming that there was no such passage on the Northern side of the petitioner's house. The respondent claimed that she purchased a property with specific measurements and boundaries and that what is claimed as a passage by the petitioner, belonged to the defendant absolutely.

5. The suit was taken up for trial and the petitioner relied upon a registered settlement deed dated 03.03.1962 executed by her father in favour of her mother. It was marked as Ex.A.1. The respondent also examined herself as DW.1 and after trial, the suit was reserved for judgment.

6. After the judgment in the suit was reserved, the petitioner filed an application for reopening, and after reopening the petitioner filed two applications, one for appointment of a Commissioner to inspect the property and note down the physical features and another for marking the Xerox copy of the document bearing No.6857/1983. Both these applications were dismissed by the trial Court forcing the petitioner/plaintiff to come up with the above revision petitions.

7. In the affidavit in support of the application for appointment of commissioner, the petitioner claimed that the existence of passage can be brought to light only if a Commissioner is appointed. In the application for marking the Xerox copy of the document No.6857/1983, the petitioner claimed that when she applied for a certified copy of the document, it was returned by the SRO on the ground that the records in the office were burnt in a fire accident. The petitioner claimed that document No.6857/1983 is a link document to the title deed of the respondent/defendant and that the same will disprove the case of the respondent.

8. However, the trial Court dismissed the application for appointment of commissioner on the ground that when DW.1 has admitted the existence of a pathway, there was no necessity to appoint a Commissioner. The other application was rejected on the ground that the

Xerox copy of a link document to the defendant's property cannot be allowed to be marked, in the absence of any explanation from the petitioner as to how she got possession of the same.

9. Assailing the orders of the Court below, the learned counsel for the petitioner argued that no prejudice will be caused to the respondent by allowing the application for appointment of a Commissioner and the application for marking the Xerox copy of a link document. The learned counsel placed reliance upon a judgment of the Supreme court in *Shreepat v. Rajendra Prasad*¹, a judgment of a Division Bench of this Court in *IVRCL Assets & Holdings Ltd., v. A.P. State Consumer Disputes Redressal Commission*² and a judgment of a learned Single Judge of this Court in *Ramakrishna Constructions, Karimnagar v. Singareni Collieries Co., Ltd.*,³

10. I have carefully considered the submissions of the learned counsel for the petitioner.

11. At the outset it should be pointed out that both the interlocutory applications were taken out by the petitioner only after the judgment was reserved in the suit. There is no explanation as to how wisdom suddenly dawned upon the petitioner after the judgment was reserved. As I have pointed out earlier, the suit was for a declaration of the right of the plaintiff to a passage on the Northern side of her house and for a consequential injunction. In para-21 of the written statement, the respondent/defendant disputed the existence of the passage and claimed that what was described as passage is a part of the property

¹ JT 2000 (7) SC 379

² 2014 (4) ALD 1 (DB)

³ 2015 (1) ALD 427

owned by her. Therefore, it is the primary responsibility of the petitioner to establish by evidence, the existence of the pathway and her right to use the passage. It is well settled that an Advocate Commissioner cannot be appointed to collect evidence. Therefore, the dismissal of the application for appointment of Commissioner cannot be found fault.

12. Insofar as the other application is concerned, the petitioner wanted to mark the Xerox copy of a document, which is allegedly the link document to the title deed of the respondent. It is true that when the primary evidence is destroyed a secondary evidence can be let in. But the secondary evidence is that of a document to which the defendant's predecessor in title alone was a party. As rightly pointed out by the trial Court, there is no explanation from the petitioner as to how she came into possession of that document. Hence the trial Court was right in rejecting even the other application.

13. The decision of the Supreme Court in *Shreepat*, relied upon by the petitioner, turned only on the facts of the case. There was no legal principle laid down in the said decision as to the circumstances under which an Advocate Commissioner can be appointed.

14. Similarly, the decision of the Division Bench in *VRCL Assets and Holdings Ltd.*, is also of no assistance since the same concerned the marking of a document, which was unstamped and unregistered. In the case on hand we are not concerned with the question of stamping and registration but the question of allowing the petitioner to mark the Xerox copy of a document supposed to be the link document to the respondent's title deed.

15. Therefore, I find no reasons to interfere with the orders of the Court below. Hence the Civil Revision Petitions are dismissed. As a sequel, miscellaneous petitions pending in these revisions, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

10th October, 2017
Js.



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

CIVIL REVISION PETITION NOS.4439 & 4440 Of 2017



10th October, 2017

Js.