

THE HON' BLE DR. JUSTICE B.SIVA SANKARA RAO

CIVIL REVISION PETITION No.1057 OF 2017

ORDER:

This revision is filed by the petitioner/ plaintiff, aggrieved by the order dated 15.02.2017 in I.A.No.298 of 2016 in O.S.No.26 of 2016 passed by the Junior Civil Judge, Pargi.

2. Heard both sides.

3. The petitioner/ plaintiff filed I.A.No.298 of 2016 under Order XXVI Rule 9 C.P.C. for appointment of an advocate commissioner for local inspection and to demarcate the suit schedule property in the suit for perpetual injunction and the lower Court, after contest, dismissed the petition on 15.02.2017. The same is now impugned in the revision.

4. In fact, this Court, in Bandi Samuel and another v. Medida Nageswara Rao¹ referring to the several expressions considered the scope of Order XXVI Rule 9 and Section 75 C.P.C. The very wording of Rule 9 of Order XXVI says Commissions to make local investigation. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mense profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such

¹ CDJ 2016 APHC 619

investigation and to report thereon to the Court. Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules. The very rule no way says in which suit, a commissioner can be appointed and cannot be appointed, as in any civil suit, a commissioner can be appointed, where the Court thinks fit of necessary of any local investigation having deemed fit. The very wording is local investigation and the purpose of local investigation is to elucidate any matter in dispute itself indicates permissibility of collection of evidence, but mainly from the unique feature of such collection saves much oral evidence and valuable time of the Court and parties or by oral evidence cannot effectively be proved like measurement and demarcation, identify on ground and physical features noting etc.,

5. In *Chalapati Veeranna v. Chalapati Venkatachalam*², the Hon'ble Division Bench of this Court observed that even an *ex parte* advocate commissioner can be appointed and however before execution of the commission, the commissioner has to give notice to both parties including to the party to whom no notice served in the suit and the petition. Thus, the impugned order is unsustainable.

6. Accordingly, the Civil Revision Petition is allowed by setting aside the dismissal order of the lower Court dated 15.02.2017 in I.A.No.298 of 2016 and the petition is allowed appointing an

² AIR 1959 AP 170

advocate commissioner with Surveyor assistance for measurement and demarcation of the plaint schedule property in S.No.7 of Pargi Village which is the remaining out of Ac.1.30 guntas covered by S.No.7/ 1 on excluding Ac.0.35 guntas in S.No.7/ 2 and to draw a plan with rough sketch and to submit report by also noting the physical features. The lower Court is directed to name advocate commissioner and issue warrant and fix his fees. Both parties are entitled to give their work memos. The 1st defendant-Pargi Market Committee is also entitled to give its own survey report along with work memo to the Commissioner and the Surveyor to take into consideration of the same and if necessary to draw separate plans with reference to the said survey report and otherwise if there is a difference. It is further directed to execute the warrant within a period of sixty days.

7. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. There shall be no order as to costs.

DR. B. SIVA SANKARA RAO, J

Date: 15.12.2017
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