

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

CIVIL REVISION PETITION No.933 OF 2013

ORDER:

Heard counsel for petitioners/plaintiffs in O.S.No.105 of 2011 pending on the file of the I Additional District Judge, Kadapa, among the 22 respondents, but for R6 and R7, even notices taken to the addresses in the plaint returned as unserved, however, others served including to the advocates on record for them. It is taken as sufficient service for no representation from any of the respondents and taken as heard the respondents to decide the petition on merits. R6 and R7 who remained *ex parte* before the lower court even served to the same address.

2. The revision is maintained against the dismissal order of the lower court in I.A.No.1410 of 2012, which is an application for appointment of an advocate commissioner to visit the plaint schedule property for localization with reference to the revenue records including FMB. The plaint schedule property is government dry 908-1A-2A-1A of Acres 5.40 cents located at Chinna Chowk Revenue Village, Kadapa Urban and Kadapa Sub-Registry of YSR Kadapa District, within the boundaries mentioned in the schedule of the application. The said application was dismissed by the learned trial Judge with observation that the matter is even

before framing of the issues, thereby it is premature to appoint an advocate commissioner and thereby liberty given to file application after framing of issues and commencement of evidence of plaintiffs.

3. In fact, as held by this Court in ***Bandi Samuel and another Vs. Medida Nageswara Rao***¹, referring to the several earlier expressions, the purpose of the appointment of an advocate commissioner as contemplated by Order XXVI Rule 9 r/w 75 CPC is for purpose of elucidating the matters in controversy. The law is settled from the above expression referring to the earlier expressions referred therein right from 1959 that a commissioner can be appointed at the time of filing of the suit even by *ex parte* order and there is no set rule that a commissioner to be appointed only after framing of issues or after commencement of trial or after closure of the evidence of the party.

4. Having regard to the above, a dismissal of the application by the lower court on that ground of no issues framed or after framing of issues and commencement of evidence of plaintiff, plaintiff can renew his request is unsustainable.

5. Having regard to the above, while setting aside the dismissal order, remedy is given to the petitioner to file a

¹ CDJ 2016 APHC 619

fresh application irrespective of the stage of the suit to decide the same on own merits.

6. Accordingly and in the result, this civil revision petition is disposed of. 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

07.11.2017
SS

