

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

CIVIL REVISION PETITION No.6633 OF 2017

ORDER:

1. This revision is filed by the petitioner/ respondent No.4, aggrieved by the order dated 15.11.2017 in I.A.No.6 of 2017 in O.A.No.2 of 2017 passed by the Endowment Tribunal, Hyderabad.

2. Heard and perused the grounds urged in the revision and the impugned order.

3. No doubt, the very Order XXVI Rule 9(A) C.P.C. speaks the appointment of a commissioner arises in a suit or proceeding in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute..... From reading of Section 75 C.P.C. subject to conditions and limitations as may be prescribed, the Court may issue a commission--

- (a) to examine any person;
- (b) to make a local investigation;
- (c) to examine or adjust accounts;
- (d) to make a partition;
- (e) to hold a scientific, technical, or expert investigation;
- (f) to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;
- (g) to perform any ministerial act.

4. From the above, the investigation is contemplated including by local inspection provided it is for the purpose of elucidating any matter in controversy, which are the prerequisites for appointment of an advocate commissioner as also held by this Court in *Bandi Samuel and another v. Medida Nageswara Rao*¹. Here, the purpose sought is for visiting the property, noting down the physical features and to take photographs as to the existing possession of the schedule property in question and the respondents 1 and 2 representing the institution stated a survey also to be required and in opposing the petition by the revision petitioner, respondents 3 to 14 before the lower Court, it is their main contention that a Commissioner cannot be appointed for gathering the evidence. Gathering of evidence is not prohibited practically, but for, fishing out information as per the settled law. The very purpose of investigation or local inspection is to gather evidence, which is apparent and not by conducting any oral enquiry that is known as fishing out information. Once such is the case, even though, the Tribunal loosely observed if not erroneously in saying no hurdle or loss is going to cause either side, when that is not the cause for appointment or refusal of the advocate commissioner sought for, once the facts show the requirement but for to observe that the approach of the lower Court is not correct,

¹ CDJ 2016 APHC 619

practically there is nothing to interfere with the impugned order.

5. Accordingly, the Civil Revision Petition is disposed of. Both parties are at liberty within the scope of the warrant to give their work memo to answer by the commissioner and to submit report. Needless to say, the commissioner report subject to objections filed if any form part of the Court record for appreciation of the matter in controversy in the *lis* covered by the O.A.

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

Date: 06.12.2017

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DR. B. SIVA SANKARA RAO, J

