

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2667 of 2018

ORDER:

1) Assailing the order dated 13.08.2018 passed in E.A.No.28 of 2018 in E.P.No.22 of 2011 in O.S.No.266 of 1986 on the file of the Junior Civil Judge, Prathipadu, wherein a petition filed under Section 151 of the Code of Civil Procedure, seeking to appoint an Advocate Commissioner, was allowed, the present revision under Section 115 of the C.P.C., came to be filed.

2) The circumstances, which lead to filing of the present Civil Revision Petition are that earlier the petitioner, who is a third party/objector filed C.R.P. No.1385 of 2014 before this Court. By an order dated 06.12.2016, this Court disposed of the C.R.P., holding as under:-

"Accordingly, the Civil Revision Petition is disposed of by directing the lower court pursuant to the delivery warrant entrusted to the Amin to localize the property covered by the E.P. schedule from identification with reference to the assistance of the Surveyor and then to deliver the same to the D.Hr., from whosoever person in possession including the claimants if any. As warrant already entrusted to the Amin the only thing to be done is naming an Advocate-Commissioner to assist the Amin or directly instead of Amin, with the assistance of the Surveyor to execute the warrant by Commissioner by localization and delivery. The lower court shall complete the process within three months from the date of receipt of copy of this order. No order as to costs."

3) Pursuant to the above order passed by this Court, an application came to be filed before the trial court bringing to the notice of the Court, the order passed by the Hon'ble High Court and for implementation of the said order within the time period stipulated by the Hon'ble Court. The said application was allowed by the impugned order which is challenged before this Court.

4) The main ground urged by the learned counsel for the revision petitioner is that when the earlier report of the Advocate Commissioner is in force, the question of appointing the second Advocate-Commissioner, is impermissible under law. He relied upon various judgments of this Court in support of his plea.

5) In **R.Vijayudu v. N.Ramachandra Reddy**¹, this Court while dealing with a petition filed under Order 26 rule 10 C.P.C., observed that "If for any reason the court is not satisfied with the proceedings of the Commissioner, it may direct further inquiry as it thinks fit. In such course of action, the court may go to the extent of appointing a second Commissioner. It was also held that the Court may appoint a second Commissioner for the same purpose, but appointment of a Commissioner for the second time can be made only when the Court is not satisfied with the report of the earlier Commissioner, as contemplated under sub-rule(3) of Rule 10, of Order 26 CPC"

¹ 2004(5) ALD 486

6) In **Koduru Sesha Reddy v. Gottigundala Venkata Rami Reddy**², a learned Single Judge of this Court while dealing with appointment of an Advocate-Commissioner, held that the necessity to appointment Advocate-Commissioner would arise, if only, the evidence, which is already on record, leaves something to be explained further and the Court feels that best way to go nearer the truth of the matter is by appointing a Commissioner. Except where, the purpose of appointing a Commissioner is to note the physical features existing as on that day, appointment of Commissioner is to be undertaken only after hearing both the parties. The report submitted by an ex parte Commissioner would hardly be of any evidentiary value or of assistance of deciding the dispute. It was a case where the court was dealing with where a report was submitted by the Commissioner without hearing otherside/without taking the objections from otherside.

7) In **Kushal Rao v. Shyam Rao and another**³, the Court while dealing with appointment of second Commissioner, held that it is only when the report of the first Commissioner is unsatisfactory and the Court is dissatisfied with his proceedings, that a second Commissioner could be appointed under the provisions of Order XXVI Rule 10 Sub-clause (2) of the Code, such a report and the evidence recorded by the Commissioner would be evidence in that case, which

² 2006(1) ALD 372

³ 1997(1) ALT 93

has to be taken into consideration while deciding the matter in issue by the Court and, therefore, as a routine, if a second commissioner is appointed, it has got serious consequences wrought (sic.fraught) with danger to the ultimate justice.

8) Therefore, the argument of the learned counsel for the revision petitioner that the second Commissioner cannot be appointed as a matter of course, without giving any finding with regard to the report of the first Commissioner, cannot be disputed. But in the instant case, a reading of the order passed by the learned Single Judge in C.R.P. No.1385 of 2014, which lead to passing of the impugned order, would show that since the delivery warrant was entrusted to Amin to localize the property covered by E.P., schedule, the only thing that is to be done is to name an Advocate Commissioner to assist the Amin or with the assistance of the Surveyor shall execute the warrant by Commissioner by localizing the property and deliver the same. This order, which has been passed by a learned Single Judge of this Court, is not challenged and no order has been placed on record to show that this order was either stayed or atleast challenged before the higher forum. Therefore, the order of the trial court in appointing Commissioner again to assist the Amin or execute the same directly by the Commissioner with the assistance of the Surveyor by localizing the property and delivery as

per the direction of this Court, cannot be found fault with. Hence, I see no reason to interfere with the order passed by the trial court.

9) Accordingly, the C.R.P. is dismissed. There shall be no order as to costs. As a sequel to it, miscellaneous petitions pending if any in this C.R.P. shall stand dismissed.

JUSTICE C. PRAVEEN KUMAR

Dt: 28.08.2018

GM

