

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

C.R.P.NO.967 OF 2014

ORDER:-

This revision petition is filed questioning the docket order, dated 25-07-2013 by which an Advocate Commissioner was appointed to record the evidence of Pws.1 to 4.

2. This court has heard both the learned counsel appearing for the petitioner and respondent.

3. The learned counsel for the petitioner argued that the lower court mechanically appointed an Advocate Commissioner to record the evidence. It is his submission that the evidence in such cases should be recorded in an open court so that the Presiding Officer will have an opportunity to observe the demeanour of a witness. The learned counsel for the petitioner relies upon two judgments of this court in *Pataballa Gangabhavani vs. Puppala Ramachandra Rao*⁽¹⁾ and in *D.Chendrakala vs. Matashrama Seva Sangam, E.G. District*⁽²⁾ to buttress his point that an Advocate Commissioner should not be appointed mechanically.

4. In reply thereto, the learned counsel for the respondent argues that in the case of Salem Bar Association in 2005 itself the Hon'ble Supreme Court has said that only in a complicated/complex cases involving serious questions

¹ 2010 (6) ALD 452

² 2007(1) ALT 230

of law and fact that the court should record the evidence. The learned counsel also relies upon a judgment of this court in *V.Rama Naidu and another vs. V.Ramadevi*⁽³⁾ and states that the learned single judge has reviewed the entire case law and the provisions of the CPC both prior to and after the amendment and ultimately came to a conclusion that there is no hard and fast rule that can be laid down as a rule of universal application as to when an Advocate Commissioner is to be appointed. The learned counsel points out that Order XVIII Rule 19 CPC starts with a *non-obstante* clause and states that notwithstanding anything contained in the Rule, the court may instead of examining the witnesses in an open court, direct their statements should be recorded on a Commission. Therefore, the submission of the learned counsel is that the amendment has to be given effect to and that the amendment has already been upheld by the Apex Court. Therefore, he prays that this application should be dismissed.

5. After hearing both the learned counsel, this court notices that the evidence of PW.1 in this case was filed on 06-12-2011 and from 06-12-2011 till 25-07-2013 the matter underwent a number of adjournments, but there was no substantial progress in the examination of the

³ 2018 LAWSUIT (Hyd) 48

witnesses. In those circumstances, the court appointed an Advocate Commissioner to record the evidence of PWs.1 to 4. This court also notices that even in the decision reported in *D.Chendrakala(2nd supra)* filed by the learned counsel for the petitioner, a learned single judge of this court held that as the dispute in the facts and circumstances of the case involves a serious dispute about a Will, there is a need and necessity to record the evidence in an open court. But, in the case on hand, the counsel was not able to show that such complicated questions of fact and law are involved. Even in the judgment relied upon by the learned counsel for the respondent, a learned single judge of this court has carried on an extensive study of the subject and came to a conclusion that in complicated matters the court should generally record the evidence of atleast the main witness and appoint an Advocate Commissioner to record the evidence of other witnesses. The learned single judge also notices that due to pressure of work and the workload the courts are not in a position to devote time to examine the witnesses. It is to ease this burden that the provisions of Order XVIII have been amended and the power to appoint an Advocate Commissioner has been granted. In the case on hand, the learned counsel for the petitioner did not make any submission to the effect that the case is a very

complicated case requiring the examination of the witnesses in an open court only.

6. Therefore, this court is of the opinion that there are no merits in the revision petition and the same is liable to be dismissed.

7. It is noticed that as the suit is of the year 2010, the court below is directed to issue appropriate directions to the Advocate Commissioner to proceed with recording of the evidence on a day to day basis. The court below should make all endeavours to dispose of the suit within a period of six months from the date of receipt of a copy of this order.

With the above observation, the Civil Revision Petition is dismissed. No costs. The interlocutory applications pending, if any, shall stand closed in consequence.

30-11-2018
TSNR

D.V.S.S.SOMAYAJULU,J