

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

CRP No.2750 of 2014

ORDER:

This Civil Revision Petition is filed questioning the docket order dated 01.07.2014 in IA No.160 of 2014 in AS No.61 of 2013 passed by the I Additional District Judge, Kadapa.

The plaintiff, who is the respondent in the present revision, has filed a suit for permanent injunction. Initially, the trial Court granted a temporary injunction ultimately dismissed the suit. Aggrieved by the same, the appeal AS No.61 of 2013 was filed. During the pendency of the appeal, the application IA No.160 of 2014 was filed by the plaintiff for appointment of an Advocate Commissioner. After considering the material available on record, the appellate Court allowed the said application on 01.07.2014 appointing an Advocate Commissioner to measure the disputed property with the help of qualified surveyor. Aggrieved by the said order, the present revision is filed by the defendants.

Heard Sri V.R. Reddy Kovvuri, learned counsel for the revision petitioners/defendants and Sri G. Ramachandra Reddy, learned counsel for the respondent /plaintiff.

The averments of the application are that the plaintiff is in possession of the suit schedule property and taking advantage of the dismissal of the suit, the respondents are making efforts to make construction in the suit schedule premises by using force.

The defendants, who are the petitioners in the present revision, denied the allegations made in the application and also took an objection that a similar application was already filed in the trial Court for appointment of an Advocate Commissioner and the same was dismissed. They also took a plea that the plaintiff/appellant before the appellate Court is making the same attempt to collect evidence.

Further, it is averred in ground No.6 of the grounds of revision that the Advocate Commissioner cannot be appointed at the appellate court stage without satisfying the conditions under Order 41 and Rule 27 CPC and analogous provisions. In addition, the learned counsel for the revision petitioners/defendants questions the manner in which the impugned order was passed. He also submits that the appointment of Advocate Commissioner to localize the suit land in an appeal would amount to

introducing additional evidence. He relied on a judgment reported in ***Penta Urmila v. Karukola Kumaraswamy***¹

In reply thereto, the learned counsel for the respondent/plaintiff submits that the reasons mentioned in para-3 of the counter affidavit are sufficient to dismiss the revision. It is his case that taking advantage of the dismissal of the suit, after the impugned orders were passed in the appeal, the revision petitioners/defendants are making efforts to make constructions. Therefore, the learned counsel justifies the need for appointment of Advocate Commissioner, as this is an event occurred later in which the same is brought to the attention of this Court.

This Court notices that the averment of the respondent/plaintiff in para-3 of the affidavit filed in support of the application IA No.160 of 2014 are self-contradictory. In the first line, it is mentioned that he is in possession and enjoyment of the petition schedule property, but in the very same line, he stated that taking advantage of the dismissal of the suit, the respondents are making efforts to make constructions in the petition schedule property. The said two sentences are contradictory to each other.

¹ 2005 (2) ALD 130

In addition, the defendants filed a counter stating that the purpose of seeking appointment of an Advocate Commissioner is to note down the measurements and physical changes that have supposedly occurred after filing the suit. The developments after filing the suit cannot be considered to decide the appeal in a suit for an injunction. It is also noticed that the impugned order has been passed without assigning any reason whatsoever. Time and again it has been laid down by the highest courts of land that every order should be supported by sufficient reasons. Despite clear pronouncements by the highest courts of land, the impugned order is passed without assigning any reasons and more particularly, ignoring the averments made in the counter of the revision petitioners/ defendants.

In addition, the Court also notices that when an appeal is pending, the parties do not have right to introduce the evidence of their choice. The conditions prescribed under Order 41 Rule 27 CPC are very clear and if they are satisfied in the present set of circumstances of the case, the advocate commissioner can be appointed. Otherwise, he cannot be appointed.

In the case on hand, the affidavit of the respondent/plaintiff in IA No.160 of 2013 is silent of the

need for appointment of the Advocate Commissioner. On the contrary from the counter, it is clear that an application for appointment of Advocate Commissioner was already made in the lower Court, the same was rejected. In addition, no ground is laid down to justify need for the appointment of Advocate Commissioner in a suit for permanent injunction. The material aspect that has to be considered is the possession of the suit schedule property as on the date of the suit. No subsequent event including the need to take measurements in the suit schedule property will not in any way reach the appellate Court. For deciding the case of the plaintiff in the lower Court, he will have to prove his possession as on the date of filing of the suit. Even otherwise, the prayer made in IA No.160 of 2014 is for appointment of an Advocate Commissioner to measure the properties as per the respective sale deeds and to file sketch, apart from noting the physical features. In the opinion of this Court, it is not permissible under law. Even the judgment of the learned single Judge of this Court in **Penta Urmila's** case clearly is to the same effect. A learned single Judge of this Court already held that appointing Advocate Commissioner when the appeal is pending to localize the suit land; to measure the same

and to file a sketch would amount to introducing additional evidence and it is not permissible unless the conditions prescribed under Order 41 Rule 27 CPC are satisfied. In the case on hand, none of the conditions prescribed under Order 41 Rule 27 CPC are satisfied. The order passed is a very cryptic order without any reasons at all. Therefore, for all the above reasons, this Court is of the opinion that the revision is to be allowed.

In the result, the Civil Revision Petition is allowed. The docket order dated 01.07.2014 in IA No.160 of 2014 in AS No.61 of 2013 passed by the I Additional District Judge, Kadapa is set aside. In the circumstances of the case, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

D.V.S.S. SOMAYAJULU, J

Date: 13.11.2018
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