

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

CRP.Nos.4090, 4091, 4092 & 4954 of 2018

Date: 27.11.2018

CRP.No.4090/18

Between:

Dandu Anitha

.. Petitioner

and

Chintakayala Mutyalu (Ex-Sarpanch) and 3 others

.. Respondents

Counsel for the Petitioner : Mr.G.Rama Gopal

Counsel for the respondents: Mr.M.Radhakrishna

The Court made the following:



Common Order:

These four Civil Revision Petitions (CRPs) arise out of separate, but, identical orders passed in the Interlocutory Applications filed in OS.Nos.1 of 2017, 59 of 2015, 60 of 2015 and 57 of 2017 respectively on the file of the X Additional District and Sessions Judge, Anakapalle.

The petitioner, who is common in all these cases, filed four separate suits for declaration and peaceful possession of certain properties mentioned in the respective schedules. The respondents have taken the plea that they are in occupation of Gramakantam lands. In order to localize the properties, the petitioner has filed separate Interlocutory Applications under Order XXVI Rule 9 CPC for appointment of an Advocate-Commissioner. These Applications having been dismissed by the lower Court, the petitioner filed these Civil Revision Petitions.

At the hearing, Mr.M.Radhakrishna, learned Counsel for the respondents, placed before the Court, a Judgment of this Court in **K.Sambasiva Reddy Vs. Challa Rama Rao Reddy and others**¹ wherein it was *inter alia* held as under:

“Under Order XXVI Rule 9 of the Code of Civil Procedure, 1908, the main purpose of appointing an Advocate

¹ 2016(6) ALD 61

Commissioner is to elucidate any matter in dispute. It does not appear from the pleadings of the parties that the identity of the property is in dispute and therefore the question of localizing the property does not arise. It is therefore wholly unnecessary for the petitioner to seek appointment of an Advocate Commissioner. Being the plaintiff, the burden is on him to prove his case by producing required evidence and he cannot seek to rely upon the help of an Advocate Commissioner for this purpose. Unless he has material in his possession to show that he has title over the suit schedule property, he should not have filed the suit at all. If, for any reason, the petitioner wants to establish the identity of the property with reference to the boundaries mentioned in the documents on ground, he is always entitled to seek survey of the property by approaching the survey officials on his own, and produce the survey reports and examine the surveyor concerned as his witness. Instead of following this procedure, the petitioner appeared to have devised a shortcut method of filing the application for appointment of an Advocate Commissioner. This, in my opinion, surely is not the purpose for which the Advocate Commissioner is appointed.”

As the facts in the present cases are identical to the facts involved in the case disposed of by this Court in the above-mentioned judgment, the ratio laid down therein squarely applies to these cases. As held in **K.Sambasiva Reddy** (cited supra), the petitioner is entitled to seek survey of the property by approaching the survey officials on his own, produce the survey reports and summon the surveyor concerned as his witness.

Subject to the liberty given to the petitioner as above, the
CRPs are dismissed.

As a sequel to dismissal of the CRPs, Miscellaneous Petitions,
pending if any, stand disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 27th November, 2018
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