

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION Nos.4905,4912 & 4939 OF 2018

COMMON ORDER:

The present Civil Revision Petitions came to be filed by the petitioners/plaintiffs questioning the common order dated 03.08.2018, passed by the Principal Senior Civil Judge, Rajahmundry in I.A.Nos.1146, 1147 and 1148 of 2018 in O.S.No.877 of 2010, wherein the applications filed by the petitioners seeking to 1) reopen the evidence of plaintiffs, 2) to issue handover summons to one A. Srinivasa Rao, Advocate, who was appointed as Commissioner in the suit and 3) to examine him as a "Court Witness" respectively, came to be dismissed.

The petitioners-plaintiffs filed the main suit for declaration of title to an extent of Ac.0.13 cents of land, which is shown as 'ABC' in the plaint plan and for recovery of possession. After completion of trial, the suit was posted for arguments and at that stage, all these applications are filed. It is stated that during the course of trial, the plaintiffs filed I.A.No.951 of 2014, seeking appointment of an Advocate Commissioner, to localise one acre of land situated at Sy.No.115/3 and also the disputed thirteen cents of land which was shown in the plaint schedule, with the assistance of Mandal Surveyor, by comparing with the documents relied upon by both sides. The said application was allowed and Advocate by name A. Srinivasa Rao, was appointed as Commissioner. After the Commissioner filed his report, the plaintiffs filed another application in I.A.No.692 of 2018, raising objections and to re-entrustment of the warrant to the Commissioner, for further execution by complying with the objections raised by them, with the assistance of District

Surveyor, as the Mandal Surveyor mis-lead the Commissioner. The said application was dismissed by the Court below on 21.6.2018. Since the Advocate Commissioner did not localise the schedule property to an extent of Ac.0.13 cents and also failed to mention the extent of land that is in their possession and as the very purpose of appointing the Commissioner was defeated states that there is necessity to summon the Commissioner as a “Court Witness” and to cross-examine him on the objections filed by them.

Respondents filed their counter contending that the Commissioner measured the properties of both the parties with reference to the title deeds as well as FMB with the assistant of Mandal Surveyor and found the petitioners to be in occupation of excess land. The findings therein were recorded by the Advocate Commissioner after identifying the survey stones.

Since the I.A.No.692 of 2018, came to be dismissed by the Court below vide order dated 21.6.2018, basing on the report of the Advocate Commissioner, the question of further reopening of the suit again for the purpose of examining the Advocate Commissioner, was said to be unnecessary. Further, after considering the respective submissions, the Court below dismissed all the impugned applications relying upon the judgment of this Court reported in **Shaik Abdul Rasool vs. G. Lakshmi Reddy and another**¹, observing that summoning of a person as a Court witness basing on an application filed by one of the parties, would be illegal and improper.

The main ground urged by Sri M. V. Suresh, learned counsel for the petitioners is that though three applications came

¹ 2011(3)ALD 138

to be filed, the Court below, erred in passing orders only in one application holding in the last paragraph of the order as “all these petitions are dismissed”. According to him, the procedure adapted by the Court below is not correct since the Court should have passed orders independently in all the three applications. Learned counsel further submits that no prejudice would be caused to the parties, if the Advocate Commissioner, is summoned as a Court witness, on the basis of the application filed by the petitioners. It is urged that if the Advocate Commissioner is examined, the truth would come out so as to enable the Court below to decide the suit judiciously with the evidence available on record.

As seen from the record, the request of the petitioners appears to be to summon the Advocate Commissioner, who submitted the report, as a Court witness. The issue as to whether the examination of Advocate Commissioner is necessary or not is one aspect. The plea of the petitioners appears to be no prejudice would be caused if the request of the petitioners to summon the Advocate Commissioner as a Court witness, is accepted. But it is to be noted that the present application to summon the Advocate Commissioner, as a Court witness, came to be filed under Order XVI Rule 14 of C.P.C.

The issue as to whether a party to the proceedings can summon an Advocate Commissioner as a Court witness, came up for consideration before the learned single Judge of this Court in the judgment reported in **Shaik Abdul Rasool** (1 supra), wherein the Court held as under:

“From the above discussion, what emerges is that, the power under Rule 14 of Order 16 CPC, is to be exercised by a Court, on its own accord, and not on the insistence

by a party to the suit. Though a party to the suit can place⁴ any information, which may impress upon or convince the Court to exercise its powers under that provision, on independent application for that very purpose does not lie. If parties are permitted to make independent application for summoning of an individual as a Court witness and are conferred with the right to insist the Court that acceded their request, it may lead to several complications. It can be used as a device to overcome their inability or failure to summon a witness, and in certain cases, to fill up the lacuna in the evidence, which is already on record. That was never the intention of the Parliament. If a party wants a particular individual be summoned or examined as witness, it must have recourse to Rules 11 and 1-A of Order 16 CPC.”

In view of the judgment referred to above, the request of the petitioners to summon the Advocate Commissioner as a Court witness on their petition cannot be accepted.

In so far as argument of the learned counsel for the petitioners that the Court below ought to have passed orders independently in all the three applications filed, it is to be noted here that all the three applications came to be filed for reopening of the suit, issuance of summons to Advocate Commissioner and to examine him as a Court witness. When once the main request of the petitioners to examine the Advocate Commissioner as a “Court Witness” is rejected, in my view, passing of orders separately in the other two applications, may not be necessary. That’s why, the Court below dismissed the other two applications without assigning any reasons. Therefore, this act of the learned Senior Civil Judge, in my view, cannot be found fault in the given set of circumstances.

Having regard to the above, I see no reasons to interfere with the impugned common order passed by the learned Senior Civil Judge and all the civil revision petitions are liable to be

dismissed. However, it is pointed out that if the learned Senior Civil Judge, is of the opinion that the examination of Advocate Commissioner, is essential for a just decision of the case, he may summon the Advocate Commissioner, as a Court witness and then proceed with the matter, in accordance with law.

Accordingly, all the Civil Revision Petitions are dismissed. There shall be no order as to costs. Miscellaneous Petitions, if any pending in these revisions, shall stand closed.

C. PRAVEEN KUMAR,J

Date:07.09.2018.
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HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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