

HONOURABLE SRI JUSTICE P.NAVEEN RAO
CIVIL REVISION PETITION NOs.7524 & 7525 OF 2017

Date: 16.02.2018

CRP No.7524 of 2017:

Between:

Bokka Jagan Mohan Reddy S/o. Ramaiah, Aged 54 years,
Occu: Agriculture, R/o. Peddanagaram village, Narsimhulapet (M),
Mahabubabad District.

.....Petitioner/respondent/
Plaintiff

and

Janigala Pullaiah s/o. Mallaiah, Aged 55 years, occu: Agrl.,
R/o. Peddanagaram village, Narsimhulapet Mandal,
Mahabubabad District.

.....Respondents/petitioners/
defendants



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

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COMMON ORDER:

O.S.No.68 of 2016 and O.S.No.66 of 2016 on the file of Junior Civil Judge at Thorrur are instituted by husband and wife separately praying to grant injunction against defendants from interfering with their peaceful possession and enjoyment of suit schedule properties, owned by the plaintiffs.

2. In two suits, I.A.No.378 of 2016 and I.A.No.381 of 2016 are, respectively, filed by the defendants under Order XXVI Rule 9 of Code of Civil Procedure (CPC) praying to appoint Advocate-Commissioner to inspect the land in Sy.Nos.562/2, 570, 569/A to an extent of Ac.8.10 guntas, Ac.4.03 guntas and Ac.3.04 guntas; and land in Sy.No.569/B/2 to an extent of Ac.4.20 guntas, respectively, in Peddanagaram village, Narsimhulapet Revenue Village, Warangal district.

3. By the orders impugned, independently made, trial Court allowed both applications. Aggrieved thereby, plaintiffs filed these two revision petitions.

4. Heard learned counsel for petitioners/plaintiffs and learned counsel for respondents/defendants.

5. Learned counsel for petitioners submits that subject lands are private patta lands of petitioners/plaintiffs and they are in peaceful possession and enjoyment of said properties. While so, respondents/defendants are interfering in their peaceful

possession and enjoyment and using their land as pathway affecting agricultural activities and damaging the crops. Therefore, suit is filed to grant injunction against such interference. While so, only to defeat the claim of plaintiffs, applications are filed to appoint Advocate-Commissioner. He would submit that in the suit for injunction, question of appointment of Advocate-Commissioner does not arise. Prayer to grant injunction required to be considered based on material brought on record to show that plaintiffs are the owners of suit schedule properties and they are in peaceful possession and enjoyment and burden is on the plaintiffs. Therefore, in injunction suit question of appointment of Advocate-Commissioner to conduct physical inspection and finding out the existence of pathway does not arise. He would further submit that as the dispute concerns the existence of pathway, question of Advocate-Commissioner conducting physical inspection and submitting a report on that aspect does not arise. In support of his contention that in the injunction suit, no Advocate-Commissioner can be appointed to gather evidence, he placed reliance on the decision of this Court in **Papasani Sankara Reddy v. Kandula Hanumantha Reddy and others** (CRP No.501 of 2013).

6. *Per contra*, learned counsel for respondents/defendants submits that pathway has been in use for several decades. Defendants and farmers of surrounding villages have been using this path to go to their agricultural fields and to Peddanagaram Village. They were trying to point out existence of cart track. According to learned counsel, only to cover up existence of pathway separating their lands, these suits are instituted and to

find out truth and correctness of physical features on filed, Advocate-Commissioner is required to be appointed. He would, therefore, submit that order of the trial Court is validly made and do not call for interference. In support of his contention that even in injunction suit Advocate-Commissioner can be appointed, he placed reliance on the decision of this Court in **Bandi Samuel and another v. Medida nageswara Rao**¹.

7. Basic facts are not in dispute. Defendants are not disputing ownership claim of plaintiffs. Only dispute is with reference to existence of cart track. According to plaintiffs, cart track is not passing through their lands, but is passing outside their lands, whereas, according to the defendants, cart track is passing through the lands of plaintiffs and this cart track is in existence for more than 5 decades. It is used not only by defendants, but also by villagers of this village and the neighboring villagers to reach to their agricultural fields and as connecting road between villages. In other words, only controversy, which requires consideration, is whether cart track is passing through lands of plaintiffs or outside lands of plaintiffs. Issue of existence of cart track and location of cart track is crucial to adjudicate respective claims in the suits. Having regard to the controversy involved, trial Court found that for proper adjudication of *lis* involved, it is necessary to appoint Advocate-Commissioner to ascertain real facts on the ground and to submit a report. Thus, on consideration of rival claims and following the decision of this Court in **Shaik Jareena Khasam v.**

¹ 2017 (1) ALD 582

Pathan Saddb Khan and others², the prayer of respondents/defendants was accepted.

8. Under Order XXVI Rule 9 CPC, Commissioner can be appointed for elucidating any matter in dispute. *Perse*, there is no prescription in what circumstances the Commissioner can be appointed and it is left to the discretion of trial Court, in the given facts of a case, to appoint a Commissioner. Thus, there is no absolute bar to appoint Advocate-Commissioner even in a suit for injunction. The appointment of Advocate-Commissioner is primarily intended to come to the aid of trial Court in appreciating real controversy between parties and to come to correct conclusion on the *lis* involved. In the decision of this Court in CRP No.501 of 2013, learned single Judge made general observations on the scope of power to appoint Advocate-Commissioner under Order XXVI Rule 9 CPC. The Court observed that such Commissioner should not be appointed to gather evidence, which is the burden on the respective parties by adducing independent evidence. Similar view was expressed by Madras High Court in **T.K.Krishnamurthy v. Tamil Nadu Water and Drainage Board, rep.by its Senior Engineer & another³**, relied upon by learned counsel for petitioners/plaintiffs. It is not in dispute that report of Advocate-Commissioner can never be the basis to decide the *lis* in a suit nor Commissioner can be appointed to gather evidence to prove the case of the parties. However, as noted above, only dispute in these two cases is existence of cart track and whether said cart track is passing through the fields of plaintiffs. Thus, to

² 2011 LawSuit AP 315

³ CDJ 2006 MHC 1911

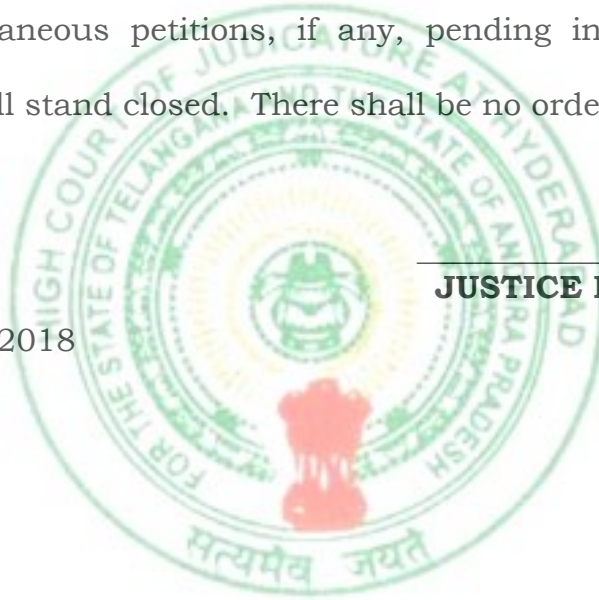
resolve the dispute in the suits, it may be necessary to ascertain ground position and report of Advocate-Commissioner would be aiding the trial Court to arrive at a correct conclusion. I, therefore, do not see any error in the decision of trial Court warranting interference.

9. Civil Revision Petitions are accordingly dismissed. However, as suggested by learned counsel for petitioners/plaintiffs, it is needless to observe that Advocate-commissioner shall take due note of village map.

Miscellaneous petitions, if any, pending in these revision petitions shall stand closed. There shall be no order as to costs.

Date: 16.02.2018
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JUSTICE P.NAVEEN RAO



HON'BLE SRI JUSTICE P.NAVEEN RAO



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